
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **November 30, 2021**

Clearway Energy LLC

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

333-203369
(Commission File Number)

32-0407370
(IRS Employer Identification No.)

300 Carnegie Center, Suite 300, Princeton, New Jersey 08540
(Address of principal executive offices, including zip code)

(609) 608-1525
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
None	None	None

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry Into a Material Definitive Agreement.

Sixth Amendment to Clearway Energy LLC and Clearway Energy Operating LLC Revolving Credit Facility

Effective as of November 30, 2021, each of Clearway Energy Operating LLC (“Clearway Operating LLC”), as borrower, and Clearway Energy LLC (“Clearway LLC”), as guarantor, entered into the Sixth Amendment to Amended and Restated Credit Agreement (the “Sixth Amendment”), with certain subsidiaries of Clearway Operating LLC party thereto, as guarantors, JPMorgan Chase Bank, N.A., as administrative agent (the “Administrative Agent”), and the lenders party thereto, which amended that certain Amended and Restated Credit Agreement, dated as of April 25, 2014 (as amended, the “Existing Credit Agreement”), among Clearway Operating LLC, Clearway LLC, certain subsidiaries of Clearway Operating LLC party thereto, the lenders party thereto and the Administrative Agent, providing for revolving commitments in an aggregate principal amount of \$495 million. Clearway Operating LLC is a subsidiary of Clearway LLC.

The Sixth Amendment amends the Existing Credit Agreement to, among other things, (i) increase the maximum permitted Borrower Leverage Ratio (as defined in the Existing Credit Agreement) to 6.00 to 1.00 (or, subject to certain conditions, 6.50 to 1.00) during the period commencing on the effective date of the Sixth Amendment and ending on the date (the “Leverage Period Termination Date”) that is the earliest to occur of (x) the date that is two business days following the consummation of the disposition contemplated by the previously-announced Membership Interest Purchase Agreement, dated as of October 22, 2021, between Clearway Operating LLC and KKR Thor Bidco, LLC (the “Thor PSA”), (y) the 120th day following the termination or expiration of the Thor PSA and (z) the maturity date of the Bridge Loan Agreement, (ii) permit the incurrence of the 2021 Bridge Facility (as defined below), (iii) permit the incurrence of hedging obligations, subject to certain conditions, and provide for a \$40,000,000 basket for cash collateral which may be provided to secure hedging obligations, (iv) permit the prepayment of unsecured, junior or subordinated indebtedness at any time following the Leverage Period Termination Date, subject to certain conditions, including that, after giving effect to such payment, the Borrower Leverage Ratio would not be greater than 5.50 to 1.00 and the Borrower Interest Coverage Ratio (as defined in the Existing Credit Agreement) would not be less than 1.75 to 1.00, (v) and to implement certain other technical modifications.

The foregoing description of the Sixth Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Sixth Amendment, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K (this “Current Report”) and is incorporated herein by reference.

Senior Secured Bridge Credit Agreement and Closing of the Utah Solar Portfolio Transaction

On November 30, 2021, each of Clearway Operating LLC, as borrower, and Clearway LLC, as guarantor, entered into a senior secured bridge credit agreement (the “Bridge Loan Agreement”) with certain subsidiaries of Clearway Operating LLC party thereto, as guarantors, Bank of America, N.A., as administrative agent, the lenders party thereto and the other parties listed on the signature pages thereof.

The Bridge Loan Agreement provides for a senior secured term loan facility in an aggregate principal amount of \$335,000,000 (the “Bridge Loan Facility”). Borrowings under the Bridge Loan Facility bear interest, at Clearway Operating LLC’s option, at either (a) a rate per annum equal to Term SOFR (as defined in the Bridge Loan Agreement) plus a SOFR adjustment plus an applicable margin equal to 1.00% per annum during the period of six months after the effective date of the Bridge Loan Facility, and 1.25% thereafter or (b) a base rate plus an applicable margin equal to 0.00% per annum during the period of six months after the effective date of the Bridge Loan Facility, and 0.25% thereafter. The Bridge Loan Agreement will mature on the date that is three hundred and sixty-four days following the effective date of the Bridge Loan Agreement.

The borrowings under the Bridge Loan Facility were used to consummate, on December 1, 2021, the previously disclosed transaction pursuant to which Utah Solar Holdings II LLC, a subsidiary of Clearway Operating LLC (“Utah Solar Holdings”), acquired from Dominion Solar Projects III, Inc. 100% of the Class B membership interests in project companies comprising 50% of the membership interests in a portfolio consisting of seven utility-scale solar farms located in Utah representing 530 megawatts of capacity (the “Utah Solar Portfolio”), for a purchase price of \$335 million in cash, subject to customary post-closing working capital adjustments. Prior to such acquisition, Utah Solar Holdings owned 50% of the membership interests in the Utah Solar Portfolio, and, upon the closing of the transaction, owns 100% of the membership interests in the Utah Solar Portfolio.

Borrowings under the Bridge Loan Agreement are guaranteed by Clearway LLC and certain subsidiaries of Clearway Operating LLC, other than subsidiaries that are excluded project companies, and are secured by substantially all of the assets of Clearway Operating LLC and the guarantors, subject to certain customary exceptions. The Bridge Loan Agreement contains covenants, which are substantially consistent with those set forth in the Existing Credit Agreement, as amended by the Sixth Amendment, that limit certain of Clearway Operating LLC's and the guarantors' activities, including those relating to: mergers; consolidations; the ability to secure additional indebtedness; sales, transfers and other dispositions of property and assets; providing new guarantees; investments; and granting additional security interests. The Bridge Loan Agreement also contains customary events of default and related cure provisions, which are substantially consistent with those set forth in the Existing Credit Agreement, as amended by the Sixth Amendment. In addition, the Bridge Loan Agreement contains a requirement that Clearway Operating LLC pay additional interest at the rate of 2.0% per annum upon the occurrence of certain Events of Default. Additionally, Clearway Operating LLC is required to comply with a maximum leverage ratio covenant and a minimum interest coverage ratio covenant on a quarterly basis, and its ability to pay cash dividends is subject to certain restrictions.

The foregoing description of the Bridge Loan Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Bridge Loan Amendment, a copy of which is filed as Exhibit 10.2 to this Current Report and is incorporated herein by reference.

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

The disclosures under Item 1.01 of this Current Report relating to the Sixth Amendment and the Bridge Loan Facility are also responsive to Item 2.03 of this report and are incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Document
10.1	Sixth Amendment to Amended and Restated Credit Agreement, effective as of November 30, 2021, by and among Clearway Energy Operating LLC, Clearway Energy LLC, the guarantors party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders party thereto.
10.2	Senior Secured Bridge Credit Agreement, dated as of November 30, 2021, by and among Clearway Energy Operating LLC, Clearway Energy LLC, the guarantors party thereto, Bank of America, N.A., as administrative agent, and the lenders party thereto.
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.

SIGNATURES

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

Clearway Energy LLC

By: /s/ Kevin P. Malcarney

Kevin P. Malcarney

General Counsel and Corporate Secretary

Dated: December 1, 2021

**SIXTH AMENDMENT
TO AMENDED AND RESTATED CREDIT AGREEMENT
AND FIRST AMENDMENT
TO AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT**

This SIXTH AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT AND FIRST AMENDMENT TO AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT (this “**Amendment**”) is dated as of November 30, 2021 and is entered into by and among CLEARWAY ENERGY OPERATING LLC, a Delaware limited liability company (the “**Borrower**”), CLEARWAY ENERGY LLC, a Delaware limited liability company (“**Holdings**”), each other Guarantor party hereto, JPMORGAN CHASE BANK, N.A. (“**JPM**”), in its capacity as the administrative agent under the Credit Agreement (the “**Administrative Agent**”), and THE LENDERS AND L/C ISSUERS party hereto, and is made with reference to (a) that certain Amended and Restated Credit Agreement dated as of April 25, 2014 (as amended by that certain First Amendment to Amended & Restated Credit Agreement, dated as of June 26, 2015, that certain Second Amendment to Amended & Restated Credit Agreement, dated as of February 6, 2018, that certain Third Amendment to Amended and Restated Credit Agreement and Administrative Agent Resignation and Appointment Agreement, dated as of April 30, 2018, that certain Fourth Amendment to Amended and Restated Credit Agreement, dated as of November 30, 2018, and that certain Fifth Amendment to Amended and Restated Credit Agreement, dated as of December 20, 2019, the “**Credit Agreement**,” and as amended by this Amendment and as may be further amended, amended and restated, supplemented or otherwise modified from time to time, the “**Amended Credit Agreement**”), by and among the Borrower, Holdings, the other Guarantors party thereto, the Lenders and L/C Issuers party thereto and the Administrative Agent and (b) that certain Amended and Restated Pledge and Security Agreement, dated as of April 25, 2014, among the Grantors party thereto and the Administrative Agent (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”). Capitalized terms used herein without definition shall have the same meanings herein as set forth in the Amended Credit Agreement, and the rules of interpretation set forth in Section 1.02 of the Amended Credit Agreement shall apply hereto, *mutatis mutandis*.

RECITALS

WHEREAS, the Loan Parties have requested that the Lenders and L/C Issuers agree to amend certain provisions of the Credit Agreement and the Security Agreement as provided for herein; and

WHEREAS, subject to the satisfaction of the conditions specified herein, the undersigned Lenders and L/C Issuers are willing to agree to such amendments to the Credit Agreement and the Security Agreement in accordance with Section 11.01 of the Credit Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION I. AMENDMENTS TO CREDIT AGREEMENT

Effective on and as of the date on which each of the conditions set forth in Section III has been satisfied (or waived by the party or parties entitled to the benefit thereof):

A. The following definitions in Section 1.01 of the Credit Agreement are hereby amended and restated in their entireties as follows:

“Acquisition Period” means, upon the Borrower’s election pursuant to Section 6.02(f), the period beginning with the closing date for a Qualified Acquisition (a “Qualified Acquisition Closing Date”) and ending on the earliest to occur of (x) the last day of the first full fiscal quarter following such Qualified Acquisition Closing Date in which the Borrower Leverage Ratio is equal to or less than 5.50:1.00 or, during the period from July 1, 2020 through and including December 31, 2020, 6.00:1.00, or, during the period from the Sixth Amendment Effective Date through and including the Leverage Period Termination Date, 6.00:1.00, (y) the last day of the third full fiscal quarter following such Qualified Acquisition Closing Date and (z) the date on which the Borrower notifies the Administrative Agent that it desires to end the Acquisition Period for such Qualified Acquisition; provided, that (i) no Acquisition Period may become effective if the Borrower fails to timely elect such Acquisition Period pursuant to the terms of Section 6.02(f), (ii) no more than one Acquisition Period may be elected with respect to any particular Qualified Acquisition, (iii) once any Acquisition Period is in effect, the next Acquisition Period may not commence until the termination of such Acquisition Period then in effect and (iv) in no event shall Acquisition Periods for one or more Qualified Acquisitions extend beyond six (6) consecutive fiscal quarters.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Other Permitted Guarantees” means unsecured guarantees and/or other unsecured credit support by Holdings, the Borrower or any Company Group Party of (a) obligations of Project Companies (including obligations of Project Companies in respect of Swap Contracts that were not entered into for speculative purposes) that do not constitute Permitted Operating Guarantees, which obligations were incurred in the ordinary course of business of the Project Companies, and (b) any indemnification obligations (or similar obligations and guarantees) made by a Project Company or a Company Group Party that is a direct or indirect parent company of such Project Company that has entered into a Permitted Tax Equity Financing in favor of (i) its Tax Equity Partner or (ii) the Equity Investor or an Affiliate of the Equity Investor that has itself indemnified or provided other credit support to such Tax Equity Partner in respect of such Project Company or Company Group Party, in the case of each of clauses (i) and (ii), in respect of representations and warranties and/or other obligations not covered by clause (B) of the definition of “Permitted Operating Guarantees”; provided that the aggregate amount guaranteed pursuant to Other Permitted Guarantees shall not, at any one time, exceed the sum of, solely in the case of Other Permitted Guarantees entered into after the A&R Credit Agreement First Amendment Effective Date, (a) \$110,000,000 and (b) the amount of unrestricted cash that is held by the Borrower (which cash shall be held by the Borrower for so long as such guarantee is in place) and subject to a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Unencumbered Total Assets” means, as at any date of determination, the assets of the Loan Parties which are not subject to Liens (other than, for the avoidance of doubt, Liens granted in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to Section 7.01(a) and Liens permitted by Sections 7.01(c), (g), (j), (l), (o) and (q)), determined on a consolidated basis and without duplication.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

B. Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in alphabetical order:

“2021 Bridge Facility” means the term loan facility in an aggregate principal amount equal to \$335,000,000.00 incurred pursuant to that certain Credit Agreement, dated as of the Sixth Amendment Effective Date, among the Borrower, Holdings, Bank of America, N.A., as administrative agent, and the lenders party thereto.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Leverage Period Termination Date” means the earliest to occur of (a) two Business Days following the consummation of the disposition contemplated by the Thor PSA, (b) the 120th day following the termination or expiration of the Thor PSA and (c) November 29, 2022.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Sixth Amendment” means that certain Sixth Amendment to this Agreement, dated as of November 30, 2021.

“Sixth Amendment Effective Date” has the meaning given to such term in the Sixth Amendment.

“Thor PSA” means the Membership Interest Purchase Agreement, dated as of October 22, 2021, between the Borrower and KKR Thor Bidco, LLC.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

C. Section 2.13(a) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(a) Provided there exists no Event of Default at such time, upon written notice to the Administrative Agent, the Borrower may from time to time elect to request, prior to the Maturity Date, an increase in the existing Revolving Credit Facility or the establishment of a new Revolving Credit Facility (provided that there shall be no more than two Revolving Credit Facilities in effect at any time) (the “Incremental Revolving Credit Commitments”) and/or to incur new term loan commitments (the “Incremental Term Loan Commitments”) and, together with the Incremental Revolving Credit Commitments, the “Incremental Commitments”), by an aggregate principal amount determined by the Borrower (for all such requests taken together) not exceeding \$1,000,000,000 (the “Incremental Facility Amount”) minus the aggregate outstanding principal amount and/or commitments, as applicable, of any Incremental Equivalent Debt incurred pursuant to Section 7.02(p) on or prior to the date of the incurrence of such Incremental Commitments; provided that any such request for Incremental Commitments shall be in a minimum amount of \$10,000,000.”

D. Section 5.13 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Section 5.13 Subsidiaries; Equity Interests; Loan Parties; Project Companies. As of the A&R Credit Agreement Third Amendment Effective Date, no Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and to the extent constituting shares in a corporation, if any, are non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13, in the case of Pledged Equity, free and clear of all Liens except Liens set forth in Sections 7.01(a), (c) and (q). As of the A&R Credit Agreement Third Amendment Effective Date, no Loan Party has any equity investments in any other Person other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and are owned by Holdings in the amounts specified on Part (c) of Schedule 5.13 free and clear of all Liens (other than Liens set forth in Sections 7.01(a), (c) and (q)) except those created under the Collateral Documents. Set forth on Part (d) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the A&R Credit Agreement Third Amendment Effective Date its jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number. Set forth on Part (e) of Schedule 5.13 is a complete and accurate list of each Project Company as of the A&R Credit Agreement Third Amendment Effective Date. Set forth on Part (f) of Schedule 5.13 is a complete and accurate list of each Company Group Party that is not a Loan Party as of the A&R Credit Agreement Third Amendment Effective Date.”

E. Section 7.01(p) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(p) Liens on cash or Cash Equivalents in an aggregate principal amount not to exceed \$40,000,000.00 at any time pledged by a Company Group Party or the Borrower to secure Swap Contracts permitted under Section 7.02(a); and”

F. Section 7.02(a) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(a) obligations (contingent or otherwise) (i) of the Borrower existing or arising under any Swap Contract in respect of interest rates on Incremental Term Loans or the 2021 Bridge Facility; provided that (x) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates and (y) such Swap Contract is not for speculative purposes and (ii) of the Borrower or any Company Group Party existing or arising under any other Swap Contract entered into in the ordinary course of business; provided that such Swap Contract is not for speculative purposes;”

G. Section 7.02(p) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(p) senior secured first lien or junior lien debt securities or term loans, senior unsecured debt securities or term loans or subordinated debt securities or term loans, in each case borrowed by the Borrower or issued by the Borrower in a public offering, Rule 144A or other private placement or bridge financing in an amount not to exceed the Incremental Facility Amount minus the outstanding principal amount and/or commitments, as applicable, of any Incremental Facility incurred on or prior to the date of the incurrence of any such Indebtedness pursuant to this clause (p) (such debt securities or term loans, as applicable, “Incremental Equivalent Debt”); provided that (i) no Event of Default shall exist before or after giving effect to the incurrence of such Incremental Equivalent Debt; (ii) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by “materiality”, “Material Adverse Effect” or any similar qualifier, in which case, it shall be true and correct in all respects) on and as of the date of incurrence of such Incremental Equivalent Debt, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 7.02(p), the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01; provided that to the extent that such Incremental Equivalent Debt will be used concurrently with the initial provision of such Incremental Equivalent Debt to finance any Investment permitted pursuant to Section 7.03(g), then such representations and warranties shall be limited to customary “SunGard” representations and warranties (including those with respect to the target contained in the acquisition or merger agreement to the extent failure of such representations and warranties to be true and correct permits the Borrower or relevant Affiliate thereof not to consummate the transactions contemplated thereby), (iii) such Incremental Equivalent Debt shall not be Guaranteed by any Person that is not a Guarantor; (iv) subject to the limitations in clauses (v) and (vi) below, the terms and provisions of such Incremental Equivalent Debt shall not be more restrictive, taken as a whole, to the Borrower and the other Loan Parties than those applicable to any Facility at the time of incurrence of such Incremental Equivalent Debt, unless such other terms (1) apply only after the Latest Maturity Date of each Facility at the time of incurrence of such Incremental Equivalent Debt, (2) shall also apply to the existing Facilities (which such application shall not require the consent of the Lenders or the Administrative Agent if so reasonably determined by the Borrower) or (3) relate only to mandatory prepayments customary for such type of debt securities or term loans, premiums (including make-whole provisions), interest, fees or (subject to the foregoing) maturity or amortization; (v) with respect to Incremental Equivalent Debt other than Indebtedness incurred pursuant to the 2021 Bridge Facility, the Weighted Average Life to Maturity of such Incremental Equivalent Debt shall be no shorter than that of any Facility in effect at the time of incurrence of such Incremental Equivalent Debt; (vi) with respect to Incremental Equivalent Debt other than Indebtedness incurred pursuant to the 2021 Bridge Facility, the Stated Maturity of such Incremental Equivalent Debt shall be no shorter than the Latest Maturity Date at the time of incurrence of such Incremental Equivalent Debt; and (vii) if such Incremental Equivalent Debt is in the form of secured debt securities or term loans, a representative acting on behalf of the holders of such Incremental Equivalent Debt shall have executed and delivered a joinder to the Pari Passu Intercreditor Agreement or the Second Lien Intercreditor Agreement, as applicable, to the Administrative Agent in accordance with the terms thereof; provided that if such Indebtedness is the initial issuance of Indebtedness designated as “Other First Lien Obligations” or “Second Lien Obligations” thereunder, then the Borrower, the Guarantors, the Administrative Agent and the representative for such Other First Lien Obligations shall have executed and delivered the Pari Passu Intercreditor Agreement or the Second Lien Intercreditor Agreement, as applicable; and”

H. Section 7.11(a) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“(a) Borrower Leverage Ratio. Commencing with the fiscal quarter ending June 30, 2014 and as of the last day of each fiscal quarter thereafter, permit the Borrower Leverage Ratio for the most recently completed Measurement Period to be greater than (i) on any date of determination other than during an Acquisition Period, 5.50:1.00 or, with respect to any such date of determination (x) during the period from July 1, 2020 through and including December 31, 2020, 6.00:1.00 and (y) during the period from Sixth Amendment Effective Date through and including the Leverage Period Termination Date, 6.00:1.00 and (ii) on any date of determination during an Acquisition Period, 6.00:1.00 or, with respect to any such date of determination (x) during the period from July 1, 2020 through and including December 31, 2020, 6.50:1.00 and (y) during the period from Sixth Amendment Effective Date through and including the Leverage Period Termination Date, 6.50:1.00; and”

I. Section 7.15 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Section 7.15 Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any unsecured Indebtedness, junior Lien Indebtedness or any Indebtedness which is contractually subordinated to the Obligations, except (a) regularly scheduled payments of principal and interest in respect of such Indebtedness in accordance with the terms of, and only to the extent required by, and subject to any subordination provisions contained in, the indenture or other agreement pursuant to which such Indebtedness was issued or incurred or any subordination agreement (including any subordination agreement entered into pursuant to Section 7.02(n)) in respect of such Indebtedness (*provided* that such regularly scheduled payments of principal shall not exceed 1.00% per annum of the aggregate principal amount of such Indebtedness), (b) prepayments and repayments of such Indebtedness made from cash of the Borrower that at such time would be permitted to be distributed to Holdings pursuant to Section 7.06(f), (c) prepayments and repayments of such Indebtedness made with the proceeds of Permitted Refinancing Indebtedness in respect thereof, (d) following the Leverage Period Termination Date, prepayments and repayments of such Indebtedness, unless (i) as result thereof and giving pro forma effect thereto and to any Indebtedness incurred in connection therewith (as though such Indebtedness had been incurred as of the first day of the most recently completed Measurement Period and remained outstanding), the Borrower Leverage Ratio for the most recently completed Measurement Period would be greater than 5.50:1.00, (ii) as result thereof and giving pro forma effect thereto and to any Indebtedness incurred in connection therewith (as though such Indebtedness had been incurred as of the first day of the most recently completed Measurement Period and remained outstanding), the Borrower Interest Coverage Ratio for the most recently completed Measurement Period would be less than 1.75:1.00 or (iii) an Event of Default has occurred and is continuing or would result from such prepayment or repayment, (e) other prepayments, repayments, redemptions or similar transactions in an amount not to exceed the greater of (i) \$50,000,000 and (ii) 1.00% of Total Assets (which shall be measured as of the date such transaction is consummated and shall take into account any transaction previously or concurrently consummated pursuant to this clause (e)) and (f) prepayments and repayments of the Convertible Senior Notes or the Existing Senior Notes with the proceeds of the Bridge Financing or any Permitted Refinancing Indebtedness in respect of the Bridge Financing.”

J. The proviso at the end of Section 8.01(e) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“provided that no Event of Default shall result under this clause (e) from an event or circumstance limited to a Material Project Company unless, as result thereof and giving pro forma effect thereto, the Borrower would be in violation of Section 7.11 (such calculation to be done on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b));”

K. The proviso at the end of Section 8.01(f) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“provided that no Event of Default shall result under this clause (f) from an event or circumstance limited to a Material Project Company unless, as result thereof and giving pro forma effect thereto, the Borrower would be in violation of Section 7.11 (such calculation to be done on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b));”

L. The proviso at the end of Section 8.01(g) of the Credit Agreement is hereby amended and restated in its entirety as follows:

“provided that no Event of Default shall result under this clause (g) from an event or circumstance limited to a Material Project Company unless, as result thereof and giving pro forma effect thereto, the Borrower would be in violation of Section 7.11 (such calculation to be done on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b));”

M. Article IX of the Credit Agreement is hereby amended by adding a new Section 9.13 as follows:

“Section 9.13. Acknowledgments of Lenders and L/C Issuers.

- (a) Each Lender and L/C Issuer hereby agrees that (i) if the Administrative Agent notifies such Lender or L/C Issuer that the Administrative Agent has determined in its sole discretion that any funds received by such Lender or L/C Issuer from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender or L/C Issuer (whether or not known to such Lender or L/C Issuer), and demands the return of such Payment (or a portion thereof), such Lender or L/C Issuer shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or L/C Issuer to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (ii) to the extent permitted by applicable law, such Lender or L/C Issuer shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender or L/C Issuer under this 9.13(a) shall be conclusive, absent manifest error.
- (b) Each Lender and L/C Issuer hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (i) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (ii) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender and L/C Issuer agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender or L/C Issuer shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, such Lender or L/C Issuer shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or L/C Issuer to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

- (c) The Borrower and each other Loan Party hereby agrees that (i) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender or L/C Issuer that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender or L/C Issuer with respect to such amount and (ii) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Payment.
- (d) Each party's obligations under this Section 9.13 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender or L/C Issuer, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

N. Section 11.21 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Section 11.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.”

SECTION II. AMENDMENT TO SECURITY AGREEMENT

Effective on and as of the date on which each of the conditions set forth in Section III has been satisfied (or waived by the party or parties entitled to the benefit thereof):

(a) Section 3.1 of the Security Agreement is hereby amended and restated in its entirety as follows:

“3.1 Title; No Other Liens. Such Grantor has the rights to each item of the Collateral free and clear of all Liens other than, except with respect to any Collateral other than Pledged Equity Interests, Permitted Liens and, in the case of Pledged Equity Interests, free and clear of all Liens except Liens set forth in Sections 7.01(a), (c), and (g) of the Credit Agreement. As of the Closing Date, no financing statement, mortgage or other public notice (other than, with respect to Intellectual Property filings with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other country or in any political subdivision of any of the foregoing) with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Administrative Agent, for the benefit of the Secured Parties, pursuant to this Agreement or as are permitted by the Credit Agreement.”

(b) Section 3.4(f) of the Security Agreement is hereby amended and restated in its entirety as follows:

“(f) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property and Deposit Accounts pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except for, in the case of any of the foregoing Collateral other than Pledged Equity Interests, Permitted Liens and, in the case of Pledged Equity Interests, free and clear of all Liens except Liens set forth in Sections 7.01(a), (c), and (g) of the Credit Agreement, and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests.”

SECTION III. CONDITIONS

This Amendment shall become effective as of the first date on which each of the following conditions in this Section III have been satisfied (the date of satisfaction of such conditions being referred to herein as the “**Sixth Amendment Effective Date**”):

A. **Deliverables to Administrative Agent.** The Administrative Agent’s receipt of the following, each of which shall be originals or electronically transmitted copies of originals (followed as soon as reasonably practicable by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Sixth Amendment Effective Date and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

i. (a) a counterpart signature page of this Amendment duly executed by each of the Loan Parties, (b) a counterpart signature page of this Amendment duly executed by the Administrative Agent and (c) a counterpart signature page of this Amendment duly executed by the Required Lenders;

ii. a certificate signed by a Responsible Officer of the Borrower certifying that as of the Sixth Amendment Effective Date, (a) there has been no event or circumstance that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect since December 31, 2017 and (b) no Default or Event of Default has occurred and is continuing; and

iii. an executed copy of the Intercreditor Agreement under and as defined in the 2021 Bridge Facility, and confirmation that the Closing Date under and as defined in the 2021 Bridge Facility shall have occurred or shall occur substantially contemporaneously with the occurrence of the Sixth Amendment Effective Date.

B. Payment of Fees and Expenses.

i. The Administrative Agent shall have received all reasonable and documented out-of-pocket fees and expenses incurred in connection with this Amendment on or prior to the Sixth Amendment Effective Date, including, to the extent invoiced at least three (3) Business Days prior to the Sixth Amendment Effective Date, reimbursement or other payment of all out-of-pocket fees and expenses in each case required to be reimbursed or paid by the Borrower under the Credit Agreement.

ii. The Administrative Agent shall have received from the Borrower a non-refundable payment, for the account of each Lender that has delivered an executed signature page hereto by 5:00 P.M. New York time on the Business Day immediately preceding the Sixth Amendment Effective Date, in an amount equal to \$10,000 per each Lender.

C. **No Material Adverse Effect.** As of the Sixth Amendment Effective Date, no event, circumstance or change shall have occurred since December 31, 2017 that has resulted in, or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect or a material adverse change in, or material adverse effect upon, the operations, business, properties, liabilities or financial condition of the Project Companies taken as a whole.

D. **Representations and Warranties.** Each of the representations and warranties in Section IV shall be true and correct in all material respects on the Sixth Amendment Effective Date (unless made solely as of a prior date, in which case such representation and warranty was true and correct in all material respects as of such date).

SECTION IV. REPRESENTATIONS AND WARRANTIES

Each Loan Party which is a party hereto represents and warrants to each Lender that the following statements are true and correct in all material respects as of the Sixth Amendment Effective Date:

A. **Corporate Power and Authority.** Each Loan Party has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Amendment and to perform its obligations under the Amended Credit Agreement and consummate the transactions contemplated by this Amendment and the Amended Credit Agreement.

B. **Authorization of Amendment.** The execution, delivery and performance by each Loan Party of this Amendment have been duly authorized by all necessary corporate or other organizational action.

C. **No Conflict.** The execution, delivery and performance by each Loan Party of this Amendment do not and will not (i) contravene the terms of any of such Person's Organization Documents; (ii) conflict with or result in any breach or contravention of, or require any payment to be made under, (a) any material Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, or (b) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (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 such Person or any of its Subsidiaries (other than Liens created under the Collateral Documents); or (iv) violate any material Law.

D. **Binding Effect.** This Amendment has been duly executed and delivered by each Loan Party that is party hereto. Each of this Amendment and the Amended Credit Agreement constitute a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party hereto or thereto in accordance with its terms, except as enforceability hereof or thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws now or hereafter in effect relating to creditors' rights generally (including specific performance) and (ii) general equitable principles (whether considered in a proceeding in equity or at law), and to the discretion of the court before which any proceeding may be brought.

E. **Representations and Warranties, Etc.** (x) All representations and warranties contained in Article V of the Credit Agreement are true and correct in all material respects (but in all respects if such representation or warranty is qualified by "materiality" or "Material Adverse Effect"), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct in all material respects (but in all respects if such representation or warranty is qualified by "materiality" or "Material Adverse Effect") as of such earlier date, and except that the representations and warranties contained in Sections 5.05(a) and (b) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b) of the Credit Agreement, respectively, and the representations and warranties contained in Section 5.05(c) of the Credit Agreement shall be deemed to refer to the statements furnished pursuant to Section 6.01(a) of the Credit Agreement with respect to the fiscal year ended December 31, 2017, and (y) no Default has occurred and is continuing.

SECTION V. ACKNOWLEDGMENT AND CONSENT OF LOAN PARTIES; REAFFIRMATION OF GUARANTIES AND LIENS

A. **Acknowledgment and Consent.** Each Loan Party hereby acknowledges that it has reviewed the terms and provisions of the Credit Agreement and this Amendment and consents to the amendments of the Credit Agreement effected pursuant to this Amendment.

B. **Guaranty and Lien Reaffirmation.** Each Loan Party hereby (i) confirms that each Loan Document (including the Guaranty), both before and immediately after giving effect to and, if applicable, as amended by this Amendment, to which it is a party or otherwise bound, and all Collateral encumbered thereby will continue to guarantee or secure, as the case may be, to the fullest extent possible in accordance with the Loan Documents, as amended by this Amendment, if applicable, the payment and performance of the Secured Obligations and (ii) ratifies all guaranties and Liens granted by it pursuant to the Loan Documents.

C. **Continuing Effect.** Each Loan Party hereby acknowledges and agrees that (i) each Loan Document, both before and immediately after giving effect to and, if applicable, as amended by this Amendment, to which it is a party or otherwise bound shall continue in full force and effect and (ii) all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Amendment.

D. **No Filings Necessary.** Except as otherwise required herein, each Loan Party hereby confirms that no additional filings or recordings need to be made, and no other actions need to be taken, by such Loan Party in order to maintain the perfection, enforceability or validity of the security interests created pursuant to the Collateral Documents.

SECTION VI. MISCELLANEOUS

A. Reference to and Effect on Credit Agreement and Other Loan Documents.

(i) On and after the Sixth Amendment Effective Date, each reference in the Credit Agreement to “this Amendment,” “hereunder,” “hereof,” “herein” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to the “Credit Agreement,” “thereunder,” “thereof” or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended by this Amendment.

(ii) Except as specifically amended by this Amendment, the Credit Agreement, the Security Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(iii) The execution, delivery and performance of this Amendment shall not constitute either (x) a novation of the Credit Agreement, the Security Agreement or any of the other Loan Documents or any obligations thereunder or (y) a waiver of any provision of, or operate as a waiver of any right, power or remedy of any Agent, Lender or L/C Issuer under, the Credit Agreement, the Security Agreement or any of the other Loan Documents. The amendments contained herein are limited to the specified provisions and circumstances described and shall not be deemed to prejudice any rights not specifically addressed herein which any Agent, Lender or L/C Issuer may now have or may have in the future under the Amended Credit Agreement, the Security Agreement or any other Loan Document.

B. Loan Document. For the avoidance of doubt, this Amendment constitutes a Loan Document.

C. Headings. Section and Subsection headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose or be given any substantive effect.

D. Governing Law. **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

E. Submission to Jurisdiction; Waiver of Venue; Service of Process; Waiver of Jury Trial. The provisions of Sections 11.14(b), (c) and (d) and Section 11.15 of the Amended Credit Agreement are hereby incorporated by reference, *mutatis mutandis*, as if set forth in full herein.

F. Counterparts; Electronic Execution. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Amendment. The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

BORROWER:

CLEARWAY ENERGY OPERATING LLC

By: /s/ Chad Plotkin

Name: Chad Plotkin

Title: Senior Vice President, Chief Financial Officer & Treasurer

GUARANTORS:

CLEARWAY ENERGY LLC

DGPV HOLDING LLC

By: /s/ Chad Plotkin

Name: Chad Plotkin

Title: Senior Vice President, Chief Financial Officer & Treasurer

[Signature Page to Sixth Amendment to A&R Credit Agreement]

ALTA WIND 1-5 HOLDING COMPANY, LLC
ALTA WIND COMPANY, LLC
CBAD HOLDINGS II, LLC
CENTRAL CA FUEL CELL 1, LLC
CLEARWAY SOLAR STAR LLC
CWEN PINNACLE REPOWERING HOLDINGS LLC
CWSP RATTLESNAKE HOLDING LLC
DAGGETT SOLAR HOLDCO LLC
DG-CS HOLDINGS LLC
DG SREC HOLDCO LLC
ECP UPTOWN CAMPUS HOLDINGS LLC
ENERGY CENTER CAGUAS HOLDINGS LLC
ENERGY CENTER FAJARDO HOLDINGS LLC
ENERGY CENTER HONOLULU HOLDINGS LLC
FUEL CELL HOLDINGS LLC
LANGFORD HOLDING LLC
LIGHTHOUSE RENEWABLE HOLDINGS LLC
MARSH LANDING HOLDCO LLC
NIMH SOLAR HOLDINGS LLC
OCOTILLO WINDPOWER HOLDINGS LLC
PORTFOLIO SOLAR I, LLC
ROSAMOND SOLAR HOLDCO LLC
RPV HOLDING LLC
SOLAR FLAGSTAFF ONE LLC
SOLAR IGUANA LLC
SOLAR LAS VEGAS MB 1 LLC
SOLAR TABERNACLE LLC
SOUTH TRENT HOLDINGS LLC
SPP ASSET HOLDINGS, LLC
SPP FUND II HOLDINGS, LLC
SPP FUND II, LLC
SPP FUND II-B, LLC
SPP FUND III, LLC
THERMAL CANADA INFRASTRUCTURE HOLDINGS LLC
THERMAL HAWAII DEVELOPMENT HOLDINGS LLC
THERMAL INFRASTRUCTURE DEVELOPMENT HOLDINGS LLC
UB FUEL CELL, LLC
UTAH SOLAR MASTER HOLDCO LLC

[Signature Page to Sixth Amendment to A&R Credit Agreement]

WV WIND HOLDINGS LLC

By: /s/ Chad Plotkin

Name: Chad Plotkin

Title: Vice President & Treasurer

[Signature Page to Sixth Amendment to A&R Credit Agreement]

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: /s/ Arina Mavilian
Name: Arina Mavilian
Title: Executive Director

[Signature Page to Sixth Amendment to A&R Credit Agreement]

JPMORGAN CHASE BANK, N.A.,
as a Lender and L/C Issuer

By: /s/ Arina Mavilian

Name: Arina Mavilian

Title: Executive Director

[Signature Page to Sixth Amendment to A&R Credit Agreement]

BANK OF AMERICA, N.A.,
as a Lender and L/C Issuer

By: /s/ Holli Balzer
Name: Holli Balzer
Title: Vice President

[Signature Page to Sixth Amendment to A&R Credit Agreement]

BARCLAYS BANK PLC,
as a Lender and L/C Issuer

By: /s/ Sydney G. Dennis
Name: Sydney G. Dennis
Title: Director

[Signature Page to Sixth Amendment to A&R Credit Agreement]

CITIBANK, N.A.,
as a Lender

By: /s/ Ashwani Khubani

Name: Ashwani Khubani

Title: Managing Director / Vice President

[Signature Page to Sixth Amendment to A&R Credit Agreement]

GOLDMAN SACHS BANK USA,
as a Lender

By: /s/ Dan Martis

Name: Dan Martis

Title: Authorized Signatory

[Signature Page to Sixth Amendment to A&R Credit Agreement]

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as a Lender

By: /s/ Mikhail Faybusovich
Name: Mikhail Faybusovich
Title: Authorized Signatory

By: /s/ Nawshaer Safi
Name: Nawshaer Safi
Title: Authorized Signatory

[Signature Page to Sixth Amendment to A&R Credit Agreement]

KEYBANK NATIONAL ASSOCIATION,
as a Lender

By: /s/ Renee M. Bonnell

Name: Renee M. Bonnell

Title: Senior Vice President

[Signature Page to Sixth Amendment to A&R Credit Agreement]

MORGAN STANLEY SENIOR FUNDING, INC.
as a Lender

By: /s/ Rikin Pandya
Name: Rikin Pandya
Title: Vice President

[Signature Page to Sixth Amendment to A&R Credit Agreement]

MUFG UNION BANK, N.A. f/k/a UNION BANK, N.A.,
as a Lender

By: /s/ Hazuki Watanabe
Name: Hazuki Watanabe
Title: Vice President

[Signature Page to Sixth Amendment to A&R Credit Agreement]

ROYAL BANK OF CANADA,
as a Lender and L/C Issuer

By: /s/ Frank Lambrinos
Name: Frank Lambrinos
Title: Authorized Signatory

[Signature Page to Sixth Amendment to A&R Credit Agreement]

SENIOR SECURED BRIDGE CREDIT AGREEMENT

Dated as of November 30, 2021

among

CLEARWAY ENERGY OPERATING LLC,

as the Borrower,

CLEARWAY ENERGY LLC,

as Holdings,

BANK OF AMERICA, N.A.,
as Administrative Agent,

and

The Lenders Party Hereto

BOFA SECURITIES, INC.,
as Sole Lead Arranger and Sole Book Runner

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11.02	Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

Form of

A	Committed Loan Notice
B	Term Loan Note
C	Compliance Certificate
D-1	Assignment and Assumption
D-2	Administrative Questionnaire
E	Security Agreement
F	[Reserved]
G	Collateral Questionnaire
H	Subordination Agreement
I	Counterpart Agreement
J	Pari Passu Intercreditor Agreement
K	Second Lien Intercreditor Agreement

TERM LOAN CREDIT AGREEMENT

This SENIOR SECURED BRIDGE CREDIT AGREEMENT (this “Agreement”) is entered into as of November 30, 2021, among Clearway Energy Operating LLC, a Delaware limited liability company (the “Borrower”), Clearway Energy LLC, a Delaware limited liability company (“Holdings”), each other Guarantor (as defined herein) from time to time party hereto, each Lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”) and Bank of America, N.A., as Administrative Agent.

PRELIMINARY STATEMENTS:

The Borrower has requested that the Lenders party hereto agree, and the Lenders have agreed, subject to the terms and conditions hereof, to extend credit to the Borrower hereunder in the form of a term loan facility in an aggregate principal amount of \$335,000,000, and the Lenders have indicated their willingness to lend such amount to the Borrower on the terms and subject to the conditions set forth herein.

It is the intent of the parties hereto that the Obligations under this Agreement will henceforth be guaranteed pursuant to the Guaranty and secured pursuant to the Collateral Documents by a legal, valid, binding and enforceable security interest and a fully perfected Lien in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, in the Collateral and the proceeds thereof.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

“Account Control Agreements” means each account control agreement entered into by each applicable Loan Party, the Administrative Agent or the Revolving Administrative Agent and the applicable depository bank party thereto.

“Acquisition Period” means, upon the Borrower’s election pursuant to Section 6.02(f), the period beginning with the closing date for a Qualified Acquisition (a “Qualified Acquisition Closing Date”) and ending on the earliest to occur of (x) the last day of the first full fiscal quarter following such Qualified Acquisition Closing Date in which the Borrower Leverage Ratio is equal to or less than 5.50:1.00, or, during the period from the Closing Date through and including the Leverage Period Termination Date, 6.00:1.00, (y) the last day of the third full fiscal quarter following such Qualified Acquisition Closing Date and (z) the date on which the Borrower notifies the Administrative Agent that it desires to end the Acquisition Period for such Qualified Acquisition; provided, that (i) no Acquisition Period may become effective if the Borrower fails to timely elect such Acquisition Period pursuant to the terms of Section 6.02(f), (ii) no more than one Acquisition Period may be elected with respect to any particular Qualified Acquisition, (iii) once any Acquisition Period is in effect, the next Acquisition Period may not commence until the termination of such Acquisition Period then in effect and (iv) in no event shall Acquisition Periods for one or more Qualified Acquisitions extend beyond six (6) consecutive fiscal quarters.

“Act” has the meaning specified in Section 11.18.

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit D-2 or any other form approved by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For purposes of Section 7.08, “Affiliate” shall also include any Person that directly or indirectly owns 10% or more of any class of Equity Interests of the Person specified.

“Agent” means each of (i) the Administrative Agent and (ii) any other Person appointed under the Loan Documents to serve in an agent or similar capacity.

“Agent Parties” has the meaning specified in Section 11.02(c).

“Agent-Related Person” has the meaning specified in Section 11.04(d).

“Aggregate Commitments” means the Term Loan Commitments of all the Lenders.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“Annual Projections” has the meaning specified in Section 6.01(c).

“Anti-Corruption Laws” means the United States Foreign Corrupt Practices Act of 1977, as amended, and, to the extent applicable to the Borrower or any of its Subsidiaries, other similar legislation in any other jurisdiction.

“Applicable Percentage” means the percentage (carried out to the ninth decimal place) of the Term Loan Facility represented by each Lender’s outstanding Term Loan. The Applicable Percentage of each Lender in respect of the Term Loan Facility as of the Closing Date is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means (a) in respect of any Base Rate Loan, (i) from the Closing Date until the six-month anniversary of the Closing Date, 0.00% and (ii) thereafter, 0.25%, and (b) in respect of any Term SOFR Loan, (i) from the Closing Date until the six-month anniversary of the Closing Date, 1.00% and (ii) thereafter, 1.25%.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means BofA Securities, Inc., in its capacity as sole lead arranger and sole book runner.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D-1 or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

“Audited Financial Statements” means the audited consolidated balance sheet of Parent and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of Parent and its consolidated Subsidiaries, including the notes thereto.

“Available Cash” means, as of any date of determination, an amount equal to (i) the sum of (x) the Distributed Cash received by the Borrower after April 30, 2018, (y) the aggregate amount of contributions to the common capital of the Borrower received in cash after April 30, 2018 (other than as a result of the exercise of the Cure Right) and (z) \$1,160,000,000, *minus* (ii) any amounts thereof used to make Investments pursuant to Section 7.03(c)(iii)(B) (assuming for such purpose that such covenant and corresponding basket had been in effect since April 30, 2018) prior to such date and after April 30, 2018, *minus* (iii) the aggregate amount of Restricted Payments made by the Borrower prior to such date and after April 30, 2018 pursuant to Section 7.06(f) (assuming for such purpose that such covenant and corresponding basket had been in effect since April 30, 2018) *minus* (iv) prepayments or repayments of Indebtedness pursuant to Section 7.15(b).

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” means Bank of America, N.A. and its successors.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” (c) Term SOFR plus 1.00% and (d) 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a), (b) and (d) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Term Loan that bears interest based on the Base Rate.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Board of Governors” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Cash Flow” means, at any date of determination, an amount equal to the Distributed Cash received by the Borrower during the most recently completed Measurement Period; provided that if the Borrower has acquired or disposed of any Equity Interests in a Project Company or the Borrower or any of its Subsidiaries (including any Project Company) has acquired or disposed of any property with a value in excess of \$5,000,000 at any time after the first day of such Measurement Period, the determinations of Borrower Cash Flow shall be made giving pro forma effect to such acquisition or disposition as if such acquisition or disposition had occurred on the first day of such Measurement Period.

“Borrower Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Borrower Cash Flow to (b) Interest Charges, in each case, for the most recently completed Measurement Period.

“Borrower Leverage Ratio” means, as of any date of determination, the ratio of (a) Total Debt as of such date (net of up to \$100,000,000 of cash that constitutes Borrower Cash Flow from a Measurement Period other than the most recently completed Measurement Period) to (b) Borrower Cash Flow for the most recently completed Measurement Period.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a borrowing of the Term Loan pursuant to Section 2.01.

“Bridge Financing” means Indebtedness of the Borrower or any other Loan Party not exceeding an aggregate principal amount of \$1,500,000,000 evidenced by any of, or a combination of, (a) a senior unsecured bridge loan facility, (b) senior unsecured debt securities issued pursuant to a public offering, Rule 144A or other private placement, (c) senior unsecured term loans or (d) any other unsecured Indebtedness incurred or issued by the Borrower or any other Loan Party, in each case the proceeds of which will be used solely to (i) repay, redeem, repurchase or otherwise acquire or exchange for value (including in one or more tender offers, “change of control” offers or “fundamental change” offers or similarly termed offers) the Convertible Senior Notes (including any cash payment to be made upon conversion of such Convertible Senior Notes), (ii) make payments of principal or interest under the Parent CSN Proceeds Loan in accordance with Section 7.06(j)(i) and (iii) make dividend payments or other distributions (including any repayment of intercompany indebtedness) to Holdings to enable Holdings to make dividend payments or other distributions (including any repayment of intercompany indebtedness) to the Parent in accordance with Section 7.06(j)(ii).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located.

“Capitalized Leases” means, with respect to any Person, all leases that have been or are required to be, in accordance with GAAP (but only as in effect on April 30, 2018, and not giving effect to any changes to GAAP occurring after April 30, 2018), recorded as capitalized leases on the balance sheet of such Person.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of the Company Group Parties:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System and (ii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 90 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-2” (or the then equivalent grade) by Moody’s or at least “A-2” (or the then equivalent grade) by S&P, in each case with maturities of not more than 12 months from the date of acquisition thereof;

(d) Investments in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have one of the two highest ratings obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition; and

(e) 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.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“Cash Management Bank” means any Person designated by the Borrower as such that, either (a) on the Closing Date, is a party to a Cash Management Agreement with a Loan Party and is an Agent, an Arranger, a Lender or an Affiliate of the foregoing, or (b) at the time it enters into a Cash Management Agreement with a Loan Party, is an Agent, an Arranger, a Lender or an Affiliate of the foregoing, in the case of each of clauses (a) and (b), its capacity as a party to such Cash Management Agreement.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“CFC” means a “controlled foreign corporation” under Section 957 of the Code.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means an event or series of events by which:

(a) Equity Investor shall cease to own, directly or indirectly, at least 35% (as measured by voting power rather than number of shares or other equity securities) of the equity securities of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right); or

(b) [reserved]; or

(c) Parent and Equity Investor collectively shall cease to, directly or indirectly, own and control legally and beneficially all of the Equity Interests in Holdings; or

(d) Holdings shall cease to directly own and control legally and beneficially all of the Equity Interests in the Borrower.

Notwithstanding anything herein to the contrary or any provision of Section 13d-3 of the Exchange Act, a Person or group shall not be deemed to beneficially own Equity Interests subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Equity Interests in connection with the transactions contemplated by such agreement.

“Closing Date” means the first date on which all the conditions precedent in Article IV are satisfied or waived in accordance with Section 11.01.

“Closing Date Projections” means the projections of Parent and its Subsidiaries for the period of fiscal year 2021 through and including fiscal year 2022 delivered to the Administrative Agent prior to the Closing Date.

“CME” means CME Group Benchmark Administration Limited.

“Code” means the Internal Revenue Code of 1986, as amended (unless otherwise provided herein).

“Collateral” means all of the “Collateral” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, each of the Security Agreement Supplements, security agreements, pledge agreements, Account Control Agreements, Securities Account Control Agreements, any Intercreditor Agreement, or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create or perfect a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Questionnaire” means a certificate in the form of Exhibit G that provides information with respect to the personal or mixed property of each Loan Party.

“Committed Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of the Term Loan from one Type to the other, or (c) a continuation of Term SOFR Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A and, if not in writing, shall be followed promptly and on the same day by a writing substantially in the form of Exhibit A.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Company Group Parties” means each direct and indirect Subsidiary of the Borrower, other than any Project Companies.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “SOFR”, “Term SOFR” and “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent in consultation with the Borrower, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent, in consultation with the Borrower, determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Contingent Obligations” means indemnities and other contingent Obligations that pursuant to their express terms survive repayment in full of principal and interest on the Term Loan and termination of the Term Loan Commitments under this Agreement.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convertible Senior Notes” means (a) any unsecured Indebtedness of the Parent so long as the Indebtedness of the Borrower under the related Parent CSN Proceeds Loan is permitted under Section 7.02(n) and does not exceed an aggregate principal amount of \$695,000,000; and (b) any amendments, modifications, replacements or refinancings of the Indebtedness described in the foregoing clause (a) or any Indebtedness incurred pursuant to this clause (b) from time to time, including any such replacement or refinancing Indebtedness to the extent the relevant portion of the proceeds thereof is irrevocably deposited in a segregated account pursuant to an escrow (or similar) agreement in form and substance reasonably acceptable to the Administrative Agent pending application to the repayment of the Indebtedness being refinanced or replaced (the “Permitted Refinancing Convertible Senior Notes”); provided that (i) the aggregate principal amount (or accreted value, if applicable) of such Permitted Refinancing Convertible Senior Notes does not exceed the aggregate outstanding principal amount (or accreted value, if applicable) of the Indebtedness being amended, modified, replaced or refinanced (plus all accrued interest and original issue discount in the nature of interest on such Indebtedness and the amount of all expenses and premiums, underwriting, issuance, commitment, syndication and other similar fees, costs and expenses incurred in connection therewith) unless another available exception under Section 7.02 is then utilized with respect to any excess (in which case the entire principal amount (or accreted value, if applicable) thereof will constitute Convertible Senior Notes after incurrence), (ii) such Permitted Refinancing Convertible Senior Notes have a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the applicable Convertible Senior Notes being refinanced, (iii) the Permitted Refinancing Convertible Senior Notes have a Stated Maturity on or later than the maturity date of the applicable Convertible Senior Notes being refinanced, (iv) the obligations in respect of such Permitted Refinancing Convertible Senior Notes shall continue to be unsecured and (v) the primary obligor in respect of such Permitted Refinancing Convertible Senior Notes shall be the Parent; provided, further, that, in the case of each of clauses (a) and (b) above, the net proceeds (after giving effect to any refinancing) shall be loaned to the Borrower as a Parent CSN Proceeds Loan.

“Counterpart Agreement” means a Counterpart Agreement substantially in the form of Exhibit I delivered by a Subsidiary pursuant to Section 6.12(d).

“Credit Extension” means a Borrowing.

“Cure Amount” has the meaning specified in Section 8.01.

“Cure Period” has the meaning specified in Section 8.01.

“Cure Right” has the meaning specified in Section 8.01.

“Daily Simple SOFR” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).

“Debtor Relief Laws” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (i) the Base Rate or Term SOFR (as applicable or, if neither is directly applicable, the Base Rate), plus (ii) the relevant Applicable Rate, plus (iii) 2% per annum.

“Defaulting Lender” means any Lender (a) that has failed to timely pay over to the Administrative Agent or any other Lender any amount required to be paid by it hereunder on the terms set forth herein for such payment, unless the subject of a good faith dispute, or (b) in respect of which the Administrative Agent has received notification that such Lender is, or has a direct or indirect parent company that is, (i) 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 (ii) the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or that a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment or (iii) the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender; provided that no Lender shall be a Defaulting Lender at any time that it shall be the sole Lender hereunder.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Discharge of the Secured Obligations” means and shall have occurred when (i) all Secured Obligations shall have been paid in full in cash and all other obligations under the Loan Documents shall have been performed (other than (a) those constituting Contingent Obligations as to which no claim has been asserted and (b) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements reasonably satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and (ii) all Term Loan Commitments shall have terminated or expired.

“Disclosed Litigation” has the meaning set forth in Section 5.06.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interest” means any Equity Interest 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 Equity Interest), 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 Equity Interest, in whole or in part, on or prior to the date that is 91 days after the Maturity Date of the Term Loan. Notwithstanding the preceding sentence, any Equity Interests that would constitute Disqualified Equity Interests solely because the holders of the Equity Interests have the right to require the Borrower to repurchase such Equity Interests upon the occurrence of a change of control or an asset sale will not constitute Disqualified Equity Interests if the terms of such Equity Interests provide that the Borrower may not repurchase or redeem any such Equity Interests pursuant to such provisions unless such repurchase or redemption complies with Section 7.06. The amount of Disqualified Equity Interests deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrower may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Equity Interests, exclusive of accrued dividends.

“Distributed Cash” means, without duplication, internally generated cash and Cash Equivalents distributed by the Project Companies and the Guarantors (other than Holdings and the Borrower), directly or indirectly, to the Borrower in respect of the Equity Interests of the Project Companies and the Guarantors (other than Holdings and the Borrower) owned, directly or indirectly, by the Borrower (other than dividends or other distributions that are funded, directly or indirectly, with substantially concurrent cash Investments, or cash Investments that were not intended to be used by a Project Company or a Guarantor for capital expenditures or for operational purposes, by the Borrower or any of its Subsidiaries in a Project Company or a Guarantor), excluding (a) the proceeds of any extraordinary receipts (including cash payments or proceeds received (i) from any Disposition by the Borrower or any of its Subsidiaries, (ii) under any casualty insurance policy in respect of a covered loss thereunder or (iii) as a result of the taking of any assets of the Borrower or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, in each case in excess of \$2,000,000) and (b) any cash that is derived from (i) cash grants and similar items to the Project Companies and the Guarantors, (ii) any incurrence of Indebtedness by Project Companies and the Guarantors, (iii) any issuance of Equity Interests by Project Companies and the Guarantors or (iv) any capital contribution to the Project Companies and the Guarantors.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means a Subsidiary of the Borrower incorporated or organized under the laws of the United States of America, any state thereof or the District of Columbia, but excluding (i) any direct or indirect subsidiary of a CFC and (ii) any Foreign Subsidiary Holding Company.

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

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, or governmental regulations relating to pollution and the protection of the environment, including natural resources such as flora and fauna, or the Release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“Equity Investor” means the Sponsors.

“Equity Investor Subsidiary” means the entities listed on Schedule 1.01 and their respective Subsidiaries as of the Closing Date.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code solely for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan of the Borrower or any ERISA Affiliate is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; or (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan.

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

“Event of Default” has the meaning specified in Section 8.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“Exchange Agreement” means the Amended and Restated Exchange Agreement dated as of May 14, 2015, by and among NRG Energy, Inc. (and its successors), Parent and Holdings, and each of the other parties thereto from time to time, as amended, supplemented, modified or otherwise replaced from time to time, including by that certain Assignment and Assumption Agreement, dated as of August 31, 2018, by and among Clearway Energy Group LLC, NRG Energy, Inc., Parent and Holdings, other than any such amendments, supplements, modifications or replacements that would be materially adverse to the interests of the Lenders in their capacity as such.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason not to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the Guarantee of such Guarantor would otherwise have become effective with respect to such related Swap Obligation but for such Guarantor’s failure to constitute an “eligible contract participant” at such time.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes imposed on or measured by its net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the United States or by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or as a result of any present or former connection between such Lender or the Administrative Agent and such jurisdiction (other than any connection arising solely from executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under, receiving or perfecting a security interest under, receiving payments under, and/or enforcing, any Loan Document, or selling or assigning an interest in the Term Loan, the Term Loan Commitments or any Loan Document), (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction described in clause (a), (c) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 11.13), any United States federal withholding tax that (i) is required to be imposed on amounts payable to such Lender pursuant to the Laws in force at the time such Lender becomes a party hereto (or designates a new Lending Office) or (ii) in the case of a Foreign Lender, is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 3.01(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts with respect to such withholding tax pursuant to Section 3.01, (e) any United States federal withholding taxes imposed under FATCA and (f) any United States federal withholding tax that is required by the Code to be withheld from amounts payable to the Administrative Agent attributable to the Administrative Agent’s failure to comply with Section 3.01(g) (other than amounts payable to the Administrative Agent that should reasonably be considered, as determined in good faith by the Borrower, as payments under Treas. Reg. 1.1441-1T(b)(2)(iv)(B)(2)(or any successor provision that is substantively comparable)).

“Exempt Wholesale Generator” has the meaning specified in Section 5.17(a).

“Existing Project-Level Indebtedness” means the Indebtedness of the Project Companies existing on the Closing Date listed on Schedule 7.02(a).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Rate” means, for any day, the rate per annum 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 Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fee Letter” means the letter agreement, dated November 30, 2021, among Holdings, the Borrower and Bank of America.

“FERC” means the Federal Energy Regulatory Commission.

“First Lien Pari Passu Intercreditor Agreement” means that certain First Lien Pari Passu Intercreditor Agreement, dated as of the date hereof, by and among JPMorgan, as Initial First Lien Representative and Initial First Lien Collateral Agent, and Bank of America, as the Initial Other Representative and the Initial Other Collateral Agent.

“Flood Insurance Laws” means, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Lender” means any Lender that is not a U.S. Person.

“Foreign Subsidiary” means any Subsidiary of the Borrower that is not a Domestic Subsidiary.

“Foreign Subsidiary Holding Company” means any Subsidiary of the Borrower that has no material assets other than the equity interests of one or more CFCs.

“FPA” means the Federal Power Act of 1935, as amended.

“FPA-Jurisdictional Generation Portfolio Companies” has the meaning specified in Section 5.17.

“FPA MBR Authorizations, Exemptions and Waivers” has the meaning specified in Section 5.17.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Generation Portfolio Companies” means the entities listed on Schedule 5.17(a) and the owner of any other facility that either (i) generates electric energy and sells electric energy, capacity or ancillary services at wholesale or (ii) generates thermal energy for sale (in the form of steam, hot water, chilled water, or other forms), in which the Borrower directly or indirectly owns, controls or holds the power to vote 10% or more of the outstanding voting securities in such owner or facility.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Grantor” has the meaning specified in the Security Agreement.

“Guarantee” means, as to any Person, any (a) obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit, in either case, in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability (after giving effect to any indemnities, rights of contribution, subrogation or other similar rights in favor of such guarantor) in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means Holdings and each Company Group Party (unless, in the case of a Company Group Party that is not wholly owned by a Loan Party or Affiliate thereof, such Company Group Party’s Organization Documents prohibit the guarantee by such Company Group Party of the Obligations pursuant to the Guaranty or the granting of a security interest by such Company Group Party to secure the Obligations), whether owned on the Closing Date or thereafter acquired, other than any Foreign Subsidiary.

“Guaranty” means the Guaranty made by the Guarantors under Article X in favor of the Secured Parties.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, and all other substances or wastes of any nature, in each case regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person designated by the Borrower as such that, at the time it enters into an interest rate Swap Contract permitted under Article VII, is an Agent, an Arranger, a Lender or an Affiliate of the foregoing, in its capacity as a party to such Swap Contract.

“Holdings” has the meaning specified in the introductory paragraph hereto.

“Holdings Tax Equity Credit Support” means unsecured indemnification, unsecured guarantee and other unsecured credit support obligations of Holdings entered into by Holdings in favor of (x) a Tax Equity Partner or (y) the Equity Investor or an Affiliate of the Equity Investor that has itself indemnified or provided other credit support to such Tax Equity Partner, in the case of each of clauses (x) and (y), in connection with a Permitted Tax Equity Financing of a Project Company (and/or a Company Group Party that is a direct or indirect parent company of such Project Company).

“Holdings Tax Equity Payments” means payments actually made by Holdings pursuant to Holdings Tax Equity Credit Support.

“Incremental Equivalent Debt” has the meaning specified in Section 7.02(p).

“Incremental Equivalent Facility Amount” means an amount equal to \$1,000,000,000 *minus* the aggregate outstanding principal amount of the Term Loan.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and not past due for more than 180 days after the date on which such trade account was created);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;
- (g) all obligations in respect of any Disqualified Equity Interests; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitees” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Intercreditor Agreement” means a Pari Passu Intercreditor Agreement or Second Lien Intercreditor Agreement, as applicable.

“Interest Charges” means, for any Measurement Period, the excess of (A) the sum of (a) cash interest, cash premium payments, cash debt discount and other similar cash fees and charges in connection with borrowed money or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) cash interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under Capitalized Leases that is treated as cash interest in accordance with GAAP, in each case, of or by the Borrower and the Guarantors on a standalone basis for the most recently completed Measurement Period over (B) any cash interest income received by the Borrower and the Guarantors on a standalone basis during such Measurement Period; provided that, for so long as the Borrower guarantees the Indebtedness represented by the Convertible Senior Notes, (x) the items referred to in the preceding clause (A) of the Parent in respect of the Convertible Senior Notes shall be included in the preceding clause (A) and (y) the items referred to in the preceding clause (A) of the Borrower in respect of the Parent CSN Proceeds Loan shall be excluded from the preceding clause (A) to the extent they do not exceed the amount calculated pursuant to clause (x) of this proviso.

“Interest Payment Date” means, (a) as to any Term SOFR Loan, the last day of each Interest Period applicable to such Term SOFR Loan and the Maturity Date in respect thereof; provided that if any Interest Period for a Term SOFR Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date in respect thereof.

“Interest Period” means as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the date one, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice, or such other period that is twelve months or less requested by the Borrower and consented to by all the Lenders and the Administrative Agent (in the case of each requested Interest Period, subject to availability); provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Term SOFR Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to a Term SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person in another Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. Except as otherwise expressly provided in this Agreement, the amount of an Investment will be the fair market value of such Investment 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, other guarantee, and/or credit support results in an Investment, the amount of such Investment (x) will be the fair market value thereof determined first as of the time such Investment is made and thereafter on an annual basis, (y) will be zero upon such Guarantee, other guarantee and/or credit support being released or terminated and (z) will be the fair market value of such Guarantee, other guarantee and/or credit support determined as of the time of any modification thereof, if modified or amended. Notwithstanding anything to the contrary herein, in the case of any Investment made by the Borrower or a Company Group Party in a Person substantially concurrently with a cash distribution by such Person to the Borrower or such Company Group Party, as the case may be (a “Concurrent Cash Distribution”), then 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.

“IP Rights” means Intellectual Property (as defined in the Security Agreement).

“IRS” means the United States Internal Revenue Service.

“JPMorgan” means JPMorgan Chase Bank, N.A. and its successors.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or binding judicial precedents or authorities, including the binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“LCT Election” has the meaning set forth in Section 1.08(a).

“LCT Test Date” has the meaning set forth in Section 1.08(a).

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“Letter of Credit” means any “Letter of Credit” issued under, and as defined in, the Revolving Credit Agreement.

“Leverage Period Termination Date” means the earliest to occur of (a) two Business Days following the consummation of the disposition contemplated by the Thor PSA, (b) the 120th day following the termination or expiration of the Thor PSA and (c) the Maturity Date.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Limited Condition Transaction” means (a) any acquisition or other Investment not prohibited hereunder by the Borrower or one or more of its Company Group Parties of any assets, business or Person that the Borrower or one or more of its Company Group Parties is contractually committed to consummate (it being understood that such commitment may be subject to conditions precedent, which conditions precedent may be amended, satisfied or waived in accordance with the terms of the applicable agreement), or (b) repayment, repurchase or refinancing of Indebtedness not prohibited hereunder with respect to which an irrevocable notice of repayment (or similar irrevocable notice) is delivered, in each case whose consummation is not conditioned on the availability of, or on obtaining, third party financing (or, if such a condition does exist, the Borrower or any Company Group Party, as applicable, would be required to pay any fee, liquidated damages or other amount or be subject to any indemnity, claim or other liability as a result of such third party financing not having been available or obtained).

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Collateral Documents, (d) the Fee Letter and (e) any subordination agreement entered into pursuant to Section 7.02(n).

“Loan Parties” means, collectively, the Borrower and the Guarantors.

“Management Services Agreement” means the Master Services Agreement, dated as of August 31, 2018, by and among Parent, Holdings, the Borrower and Clearway Energy Group LLC, as amended, supplemented, modified or otherwise replaced from time to time, other than any such amendments, supplements, modifications or replacements that would be materially adverse to the interests of the Lenders in their capacity as such.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the results of operations, properties, liabilities or financial condition of the Loan Parties and their respective Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any material Loan Document, or of the ability of any Loan Party to perform its material obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document to which it is a party.

“Material Company Group Party” means as of any date, any Company Group Party 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.

“Material Project Companies” has the meaning specified in Section 8.01(e).

“Maturity Date” means the date that is three hundred and sixty-four (364) days following the Closing Date; provided that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Maximum Rate” has the meaning specified in Section 11.09.

“Measurement Period” means, at any date of determination, the period of the most recently completed four fiscal quarters of the Borrower ended on or prior to such date.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage Policies” has the meaning specified in Section 6.12.

“Mortgaged Property” has the meaning specified in Section 6.12.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA to which the Borrower makes or is obligated to make contributions or during the preceding five plan years has made or been obligated to make contributions or with respect to which the Borrower has current or contingent liability as a result of being considered a single employer with any ERISA Affiliate.

“Net Cash Proceeds” means, with respect to the incurrence or issuance of any Indebtedness by any Loan Party or any Company Group Party or the disposition contemplated by the Thor PSA, as applicable, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the fees, underwriting discounts and commissions, taxes, and other reasonable and customary out-of-pocket costs and expenses incurred by such Loan Party or such Company Group Party in connection therewith.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-FPA-Jurisdictional Generation Portfolio Companies” has the meaning specified in Section 5.17.

“Non-FPA Sales Authorizations” has the meaning specified in Section 5.17.

“Note” means a promissory note made by the Borrower in favor of a Lender evidencing the Term Loan made by such Lender, substantially in the form of Exhibit B.

“NPL” means the National Priorities List under CERCLA.

“O&M Obligations” has the meaning set forth in the definition of “Permitted Operating Guarantees”.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to the Term Loan, any Secured Cash Management Agreement or any Secured Hedge Agreement, in each case (including those acquired by assumption), whether absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that “Obligations” shall exclude all Excluded Swap Obligations.

“Obligee Guarantor” has the meaning specified in Section 10.06.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Permitted Guarantees” means unsecured guarantees and/or other unsecured credit support by Holdings, the Borrower or any Company Group Party of (a) obligations of Project Companies (including obligations of Project Companies in respect of Swap Contracts that were not entered into for speculative purposes) that do not constitute Permitted Operating Guarantees, which obligations were incurred in the ordinary course of business of the Project Companies, and (b) any indemnification obligations (or similar obligations and guarantees) made by a Project Company or a Company Group Party that is a direct or indirect parent company of such Project Company that has entered into a Permitted Tax Equity Financing in favor of (i) its Tax Equity Partner or (ii) the Equity Investor or an Affiliate of the Equity Investor that has itself indemnified or provided other credit support to such Tax Equity Partner in respect of such Project Company or Company Group Party, in the case of each of clauses (i) and (ii), in respect of representations and warranties and/or other obligations not covered by clause (B) of the definition of “Permitted Operating Guarantees”; provided that the aggregate amount guaranteed pursuant to Other Permitted Guarantees shall not, at any one time, exceed the sum of (a) \$110,000,000 and (b) the amount of unrestricted cash that is held by the Borrower (which cash shall be held by the Borrower for so long as such guarantee is in place) and subject to a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document.

“Parent” means Clearway Energy, Inc., a Delaware corporation.

“Parent CSN Proceeds Loan” means unsecured Indebtedness incurred by the Borrower and owed to the Parent in an aggregate principal amount not to exceed the net proceeds of any Convertible Senior Notes issued by the Parent, the payment terms in respect of which shall be substantially similar to (or more favorable to the Borrower than) the payment obligations of the Parent under such Convertible Senior Notes.

“Pari Passu Intercreditor Agreement” means (i) the First Lien Pari Passu Intercreditor Agreement or (ii) a Pari Passu Intercreditor Agreement substantially in the form of Exhibit J.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PATRIOT Act” has the meaning specified in clause (d) of Article IV.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or to which the Borrower contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years, or with respect to which the Borrower has current or contingent liability as a result of being considered a single employer with any ERISA Affiliate.

“Permitted Cure Security” means Equity Interests issued by Holdings having no mandatory redemption, repurchase or similar requirements prior to 91 days after the Maturity Date, and upon which all dividends or distributions (if any) shall be payable solely in additional shares of such equity security.

“Permitted Guarantees” means Permitted Operating Guarantees and Other Permitted Guarantees.

“Permitted Operating Guarantees” means (A) unsecured guarantees and/or other unsecured credit support by Holdings, the Borrower or any Company Group Party of (i) customary contractual obligations of the Project Companies which have been incurred in the ordinary course of business on fair and reasonable terms substantially as favorable to such Person as would be obtained at the time in a comparable arm’s length transaction in respect of the operation and maintenance of the energy generating, transmission or distribution assets, and assets related thereto, owned or leased by such Person (collectively, “O&M Obligations”), but excluding (a) obligations constituting Indebtedness (unless such obligations which otherwise would have constituted O&M Obligations are Indebtedness solely due to clause (d) of the definition of Indebtedness) and (b) obligations to acquire, construct or remediate assets (including obligations in respect of capital expenditures and other capital improvements) (clauses (a) and (b), “Excluded Obligations”) and (ii) obligations of Project Companies in respect of surety bonds and performance guarantees incurred in the ordinary course of business with respect to O&M Obligations or remediation obligations in respect of the energy generating, transmission and distribution assets, and assets related thereto, owned or leased by such Person and (B) indemnification obligations (or similar obligations and guarantees) made by a Project Company or a Company Group Party that is a direct or indirect parent company of such Project Company that has entered into a Permitted Tax Equity Financing in favor of (x) its Tax Equity Partner or (y) the Equity Investor or an Affiliate of the Equity Investor that has itself indemnified or provided other credit support to such Tax Equity Partner in respect of such Project Company or Company Group Party, in the case of each of clauses (x) and (y), in respect of representations and warranties with respect to (1) O&M Obligations of such Project Company (other than Excluded Obligations) and (2) upstream transfers that adversely affect the tax status of such Project Company, in each case made by (x) such Project Company or (y) a Company Group Party that is a direct or indirect parent company of such Project Company, in each case pursuant to any definitive documentation in respect of the applicable Permitted Tax Equity Financing.

“Permitted Prior Liens” means (a) in the case of Equity Interests, the Liens described in clauses (b) and (i) of Section 7.01 and (b) in the case of all other Collateral, the Liens described in clauses (b), (d), (e), (f), (g), (i), (j), (n) and (p) of Section 7.01.

“Permitted Project Company Indebtedness” means, with respect to any Project Company, (a) intercompany Indebtedness of such Project Company with any Loan Party to the extent such Loan Party is permitted to make an Investment in such Project Company hereunder in the amount of such Indebtedness and (b) Existing Project-Level Indebtedness and other Project-Level Indebtedness owed to an unrelated Person with respect to which the creditor has no recourse (including by virtue of a Lien, guarantee or otherwise) to any Loan Party (it being understood that such restriction on recourse to a Loan Party shall not restrict (i) any acquisition or contribution agreement (including any equity contribution agreement) with respect to any Investment permitted hereunder entered into by such Loan Party, (ii) rights of such Project Company under a Project Obligation collaterally assigned to such creditor, which rights may be exercised pursuant to such Project Obligation against any Loan Party that is party to such Project Obligation, or (iii) Permitted Guarantees or other Guarantees permitted under Section 7.02).

“Permitted Refinancing Convertible Senior Notes” has the meaning set forth in the definition of “Convertible Senior Notes”.

“Permitted Refinancing Indebtedness” means any Indebtedness of the Borrower or any Company Group Party issued in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge, other Indebtedness of such Person (other than intercompany Indebtedness); 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, underwriting, issuance, commitment, syndication and other similar fees, costs and expenses 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) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Obligations, such Permitted Refinancing Indebtedness is subordinated in right of payment to the 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)(i) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Maturity Date, 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 on or later than the Maturity Date, the Permitted Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Maturity Date; (e) (i) if such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is secured, the terms of the security documents of such Permitted Refinancing Indebtedness shall be no more favorable to the secured parties in respect of such Permitted Refinancing Indebtedness than the terms of the security documents of such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded or (ii) if such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is unsecured, the obligations in respect of such Permitted Refinancing Indebtedness shall be unsecured; and (f)(x) if such Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded constitutes Indebtedness of (i) the Borrower, such Permitted Refinancing Indebtedness shall constitute Indebtedness of the Borrower and (ii) any Company Group Party, such Permitted Refinancing Indebtedness shall constitute Indebtedness of such Company Group Party and (y) no additional obligors or guarantors shall be added in respect of such Permitted Refinancing Indebtedness that were not obligors or guarantors of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

“Permitted Tax Equity Financing” means a tax equity financing entered into solely in connection with the acquisition, expansion, upgrade or refurbishment (or refinancing of any of the foregoing or of any Indebtedness incurred in connection therewith) of or by a Project Company (and/or a Company Group Party that is a direct or indirect parent company of such Project Company) of energy generating, transmission or distribution assets, or of any other energy or power facility or any assets related to any of the foregoing that are eligible for renewable energy production tax credits available under Section 45 of the Code or renewable energy investment tax credits available under Section 48 of the Code, as applicable, on an arm’s-length basis.

“Permitted Tax Equity Financing Documents” means each of the agreements, instruments, undertakings and other documents evidencing Permitted Tax Equity Financing.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate, but for the avoidance of doubt, excluding any Multiemployer Plan.

“Platform” has the meaning specified in Section 6.02.

“Pledged Debt” has the meaning specified in the Security Agreement.

“Pledged Equity” has the meaning specified in the Security Agreement.

“Project Companies” means:

(a) each entity listed on Part (e) of Schedule 5.13;

(b) any new direct or indirect Subsidiary of any Loan Party that (i) is created or acquired by any Loan Party in accordance with the terms hereof, (ii) is the direct owner, lessee or developer or is intended to become the direct owner, lessee or developer of energy generating, transmission or distribution assets, or assets related thereto, or of any other power or energy facility, or any assets relating to any of the foregoing, (iii) has no Subsidiaries and owns no material assets other than those assets necessary for the ownership, leasing, development, construction or operation of the relevant assets described in clause (ii) above, or any activities reasonably related or ancillary thereto, and (iv) has no Indebtedness other than Permitted Project Company Indebtedness; and

(c) any direct or indirect parent of any Subsidiary described in clause (b) above that (i) has no Subsidiaries other than Subsidiaries that meet the qualifications set forth in clause (b) above or this clause (c), (ii) owns no material assets other than those assets of the type described in clause (b)(ii) above, (iii) has no Indebtedness other than Permitted Project Company Indebtedness and (iv) is not a direct Subsidiary of the Borrower;

provided that, notwithstanding the foregoing, (x) in no event shall any Loan Party constitute a Project Company and (y) all Project Companies shall be Subsidiaries of the Borrower.

“Projections” means the Annual Projections and the Closing Date Projections.

“Project-Level Indebtedness” means (a) Existing Project-Level Indebtedness, (b) any additional Indebtedness (including, for purposes of this definition solely when used in the definition of “Permitted Project Company Indebtedness,” trade accounts payable created in the ordinary course of business and not past due for more than 180 days after the date on which such trade account was created, and including any Indebtedness incurred by any Project Company that is the direct parent of another Project Company to finance its equity ownership interest in such Project Company) of any Project Companies incurred after April 30, 2018 and (c) any of the foregoing that is extended, renewed, replaced or refinanced from time to time.

“Project-Level Indebtedness Documents” means each of the agreements, instruments, undertakings and other documents evidencing Project-Level Indebtedness.

“Project Obligation” means, as to Holdings or any of its Subsidiaries, any Contractual Obligations of such Person under power purchase agreements; agreements for the purchase and sale of energy and renewable energy credits, climate change levy exemption certificates, embedded benefits and other environmental attributes; decommissioning agreements; Tax indemnities; operation and maintenance agreements; leases; development contracts; construction contracts; management services contracts; share retention agreements; warranties; bylaws, operating agreements, joint development agreements and other organizational documents; and other similar ordinary course contracts entered into in connection with owning, operating, developing or constructing energy generating, transmission or distribution assets, or assets related thereto, or any other power or energy facility, or any assets relating to any of the foregoing.

“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.

“Public Lender” has the meaning specified in Section 6.02.

“PUHCA” means the Public Utility Holding Company Act of 2005.

“PURPA” means the Public Utility Regulatory Policies Act of 1978, as amended.

“Qualified Acquisition” means any one or more transactions (i) pursuant to which the Borrower acquires, for an aggregate purchase price of not less than \$200,000,000, a controlling interest (or, if it shall already own a controlling interest in such Person, an additional interest) in excess of 50% of, or property or assets of, or of an operating division or business unit of, any other Person and (ii) which is designated by the Borrower by written notice to the Administrative Agent as a Qualified Acquisition in accordance with Section 6.02(f).

“Qualified Acquisition Closing Date” has the meaning set forth in the definition of “Acquisition Period”.

“Qualified ECP Guarantor” means, in respect of any Swap Obligations, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualifying Facility” has the meaning specified in Section 5.17(a).

“Register” has the meaning specified in Section 11.06(c).

“Rescindable Amount” has the meaning specified in Section 2.11(b).

“Regulation T” means Regulation T of the Board of Governors as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Board of Governors as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board of Governors as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, advisors, controlling persons, members, successors and assigns of such Person and of such Person’s Affiliates.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Required Lenders” means, as of any date of determination, Lenders holding more than 50% of the aggregate principal amount of the outstanding Term Loan; provided that the portion of the outstanding Term Loan held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest.

“Revolving Administrative Agent” means the Administrative Agent under, and as defined in, the Revolving Credit Agreement.

“Revolving Credit Agreement” means that certain Amended and Restated Credit Agreement dated as of April 25, 2014 (as amended by that certain First Amendment to Amended & Restated Credit Agreement, dated as of June 26, 2015, that certain Second Amendment to Amended & Restated Credit Agreement, dated as of February 6, 2018, that certain Third Amendment to Amended and Restated Credit Agreement and Administrative Agent Resignation and Appointment Agreement, dated as of April 30, 2018, that certain Fourth Amendment to Amended and Restated Credit Agreement, dated as of November 30, 2018, that certain Fifth Amendment to Amended and Restated Credit Agreement, dated as of December 20, 2019 and that certain Sixth Amendment to Amended and Restated Credit Agreement, dated as of the Closing Date), by and among the Borrower, Holdings, JPMorgan, as Revolving Administrative Agent, and the lenders and letter of credit issuers party thereto from time to time.

“RoFo Agreement” means the Right of First Offer Agreement, dated as of August 31, 2018, among Parent and Clearway Energy Group LLC and, solely for the limited purposes specified therein, GIP III Zephyr Acquisition Partners, L.P., as amended by the First Amendment, dated as of February 14, 2019, the Second Amendment, dated as of August 1, 2019, the Third Amendment, dated as of December 6, 2019, the Fourth Amendment, dated as of November 2, 2020, the Fifth Amendment, dated as of August 2, 2021, and as further amended, supplemented, modified or otherwise replaced from time to time other than any such amendments, supplements, modifications or replacements that would be materially adverse to the interest of the Lenders in their capacity as such.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject of comprehensive Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

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

“Sanctions” means all 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 the United Kingdom.

“Scheduled Unavailability Date” has the meaning specified in Section 3.03(b)(i).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Second Lien Intercreditor Agreement” means (i) so long as the Revolving Credit Agreement is in effect, an agreement substantially in the form attached to the Revolving Credit Agreement as of the Closing Date and (ii) otherwise a Second Lien Intercreditor Agreement substantially in the form of Exhibit K.

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between the Borrower and any Cash Management Bank and that is designated by the Borrower as such.

“Secured Hedge Agreement” means any interest rate Swap Contract permitted under Article VII that is entered into by and between the Borrower and any Hedge Bank and that is designated by the Borrower as such.

“Secured Obligations” has the meaning specified in the Security Agreement.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, the Cash Management Banks, each Indemnitee, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Securities Account Control Agreements” means each amended and restated securities account control agreement entered into by a Loan Party, the Administrative Agent or the Revolving Administrative Agent, and the applicable securities intermediary party thereto.

“Security Agreement” has the meaning specified in clause (a)(iv) of Article IV.

“Security Agreement Supplement” has the meaning specified in the Security Agreement.

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Adjustment” with respect to Daily Simple SOFR means 0.11448% (11.448 basis points); and with respect to Term SOFR means 0.10% (10.000 basis points) for an Interest Period of one-month’s duration, 0.15% (15.000 basis points) for an Interest Period of three-month’s duration and 0.25% (25.000 basis points) for an Interest Period of six-months’ duration.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital and (e) such Person is able to pay its debts and liabilities as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability, and after taking into account any indemnification, contribution, subrogation and other similar rights.

“Sponsor” means any of (i) Global Infrastructure Management, LLC, (ii) one or more Sponsor Affiliates and (iii) any funds or partnerships or co-investment vehicles managed or advised or controlled by any of the foregoing.

“Sponsor Affiliates” means each Affiliate of the Sponsor that is not a portfolio company.

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

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings and shall exclude all Equity Investor Subsidiaries.

“Successor Rate” has the meaning specified in Section 3.03(b).

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, foreign exchange and/or currency hedges, swaps, collars, caps or other similar currency derivatives, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, (b) swaps, caps, collars, puts, calls, floors, futures, options, spots, forwards, power purchase or sale agreements, emissions credit purchase or sales agreements, power transmission agreements, netting agreements, commercial or trading agreements, each with respect to, or involving the purchase, transmission, distribution, sale, lease or hedge of, any energy, generation capacity or fuel, or any other energy commodity, service or risk, price or price indices for any such commodities and (c) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Tax Equity Partner” means any tax equity partner that (x) has entered into a joint venture agreement, limited liability company agreement or similar arrangement with a Project Company (and/or a Company Group Party that is a direct or indirect parent company of such Project Company) in connection with the consummation of a Permitted Tax Equity Financing and (y) is not an Affiliate of such Project Company or Company Group Party.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other similar charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan Commitment” means, as to each Lender, its obligation to make the Term Loan to the Borrower pursuant to Section 2.01, in an aggregate principal amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Term Loan Commitment”.

“Term Loan” has the meaning specified in Section 2.01.

“Term Loan Facility” means the aggregate amount of the Lenders’ Term Loan Commitments and the Term Loans made thereunder.

“Term SOFR” means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, *plus* the SOFR Adjustment for such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day;

provided that if the Term SOFR determined in accordance with either of the foregoing clauses (a) or (b) of this definition would otherwise be less than zero, the Term SOFR shall be deemed zero for purposes of this Agreement.

“Term SOFR Loan” means a Term Loan that bears interest at a rate based on clause (a) of the definition of Term SOFR.

“Term SOFR Replacement Date” has the meaning specified in Section 3.03(b).

“Term SOFR Screen Rate” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Thermal Utilities” means Generation Portfolio Companies, Project Companies, or Company Group Parties that are regulated as public utilities by state public utility commissions, but only with regard to their production and sale of thermal energy in the form of steam and chilled water.

“Thor PSA” means that certain Membership Interest Purchase Agreement, dated as of October 22, 2021, by and among the Borrower and KKR Thor Bidco, LLC.

“Threshold Amount” means \$100,000,000.

“Total Assets” means, as at any date of determination, the tangible assets of the Loan Parties determined on a consolidated basis and without duplication.

“Total Debt” means, as of any date of determination, for the Borrower and the Guarantors, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder constituting indebtedness for borrowed money) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments constituting Indebtedness, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services constituting Indebtedness, (e) all Attributable Indebtedness, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Borrower and the Guarantors and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or any Guarantor is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse or limited recourse to the Borrower and the Guarantors (it being understood that, in respect of limited recourse Indebtedness, Total Debt will be limited to the extent of such recourse). Notwithstanding anything herein to the contrary, (i) the undrawn amount of any Letters of Credit that are outstanding shall be excluded and not be given any effect in the calculation of Total Debt, (ii) the amount of any surety bonds that are outstanding and that are not subject to an outstanding claim shall be excluded and not be given any effect in the calculation of Total Debt, and (iii) for so long as the Borrower guarantees the Indebtedness represented by the Convertible Senior Notes, the Parent CSN Proceeds Loan shall not constitute Total Debt, except to the extent the aggregate principal amount of the Parent CSN Proceeds Loan exceeds the aggregate principal amount guaranteed by the Borrower in respect of the Indebtedness represented by the Convertible Senior Notes (in which case the amount of such excess shall constitute Total Debt in addition to the amount guaranteed by the Borrower in respect of the Indebtedness represented by the Convertible Senior Notes).

“Transaction” means, collectively, (a) the entering into by the Loan Parties of the Loan Documents to which they are or are intended to be a party, (b) the consummation of the Utah Solar Portfolio Acquisition and (c) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“Type” means, with respect to a Term Loan, its character as a Base Rate Loan or a Term SOFR Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unencumbered Company Group Parties” means Company Group Parties that have not issued Guarantees pursuant to Section 7.02(j) hereof.

“Unencumbered Total Assets” means, as at any date of determination, the assets of the Loan Parties which are not subject to Liens (other than, for the avoidance of doubt, Liens granted in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to Section 7.01(a) and Liens permitted by Sections 7.01(c), (g), (j), (l), (o), (q) and (r)), determined on a consolidated basis and without duplication.

“United States” and “U.S.” mean the United States of America.

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

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

“Utah Solar Portfolio Acquisition” means the acquisition of the remaining Equity Interests in Four Brothers Solar, LLC, Iron Spring Holdings, LLC and Granite Mountain Holdings, LLC pursuant to the Utah Solar Portfolio Acquisition Agreement.

“Utah Solar Portfolio Acquisition Agreement” means the Purchase and Sale Agreement, dated as of August 20, 2021, between Dominion Solar Projects III, Inc. and Utah Solar Holdings LLC.

“Voidable Transfer” has the meaning specified in Section 10.10.

“Weighted Average Life to Maturity” means, 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.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) 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 Person, or an allocation of assets to a series of a Person (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a Person shall constitute a separate Person hereunder (and each division of any Person that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.03 Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Accounting Standards Codification Section 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Parent or any Subsidiary thereof at “fair value”, as defined therein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of Parent and its Subsidiaries or to the determination of any amount for Parent and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that Parent is required to consolidate pursuant to FASB Interpretation No. 46 – Consolidation of Variable Interest Entities: an interpretation of ARB No. 51 (January 2003) as if such variable interest entity were a Subsidiary as defined herein.

1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 [Reserved].

1.07 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

1.08 Limited Condition Transaction.

(a) In connection with any action being taken solely in connection with a Limited Condition Transaction, for purposes of (i) determining compliance with any provision of this Agreement which requires the calculation of the Borrower Leverage Ratio or the Borrower Interest Coverage Ratio, (ii) determining the accuracy of representations and warranties in the Loan Documents or whether a Default or Event of Default shall have occurred and be continuing under Section 8.01 (including in connection with the incurrence of Incremental Equivalent Debt to finance an Investment permitted hereunder) or (iii) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Total Assets or Unencumbered Total Assets), 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 not prohibited hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into or the date of delivery of any relevant notices of prepayment or redemption, as applicable (the “LCT Test Date”), and if, after giving pro forma 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 not prohibited hereunder) as if they had occurred at the beginning of the most recently completed Measurement Period ending prior to the LCT Test Date, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with (provided that, if the Borrower has made an LCT Election, such ratio or basket may be recalculated, at the Borrower’s option, at the time of consummation of the relevant transaction or action). For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios 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 or basket at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken.

(b) If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or basket availability with respect to the incurrence of Indebtedness or Liens, or the making of Restricted Payments, mergers, the conveyance, lease or other transfer of the assets of the Borrower or any of its Company Group Parties, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness on or following the relevant LCT Test Date and prior to the earlier of (i) the date on which such Limited Condition Transaction is consummated or (ii) the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated on a pro forma basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated.

ARTICLE II
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Borrowing. Subject to the terms and conditions set forth herein, each Lender with a Term Loan Commitment severally agrees to make a loan in Dollars (such loan, a “Term Loan”) to the Borrower on the Closing Date in an aggregate amount not to exceed such Lender’s Term Loan Commitment. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. The Term Loan may be a Base Rate Loan or a Term SOFR Loan, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans. (a) Each Borrowing, each conversion of the Term Loan from one Type to the other, and each continuation of Term SOFR Loans shall be made upon the Borrower’s irrevocable notice to the Administrative Agent which may be given by a Committed Loan Notice. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) two Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans and (ii) on the requested date of the Borrowing of Base Rate Loans; provided, however, that if the Borrower wishes to request Term SOFR Loans having an Interest Period other than one, three or six months in duration as provided in the definition of “Interest Period,” the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them, and not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders and the Administrative Agent. Each Borrowing of, conversion to or continuation of Term SOFR Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of the Term Loan from one Type to the other, or a continuation of Term SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of the Term Loan to be borrowed, converted or continued, (iv) the Type of Term Loan to be borrowed or to which an existing Term Loan is to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Term Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the Term Loan shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage in respect of the Term Loan, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Article IV, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) Except as otherwise provided herein, a Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Loan. During the existence of an Event of Default, the Term Loan may not be converted to or continued as a Term SOFR Loan without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than five (5) Interest Periods in effect at any one time.

2.03 [Reserved].

2.04 Prepayments. (a) Optional. The Borrower may, upon notice (which notice, subject to Section 3.05, 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) to the Administrative Agent, at any time or from time to time voluntarily prepay the Term Loan in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) two Business Days prior to any date of prepayment of Term SOFR Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Term SOFR Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Term Loan to be prepaid and, if Term SOFR Loans are to be prepaid, the Interest Period(s) of such Term Loan. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the Term Loan Facility). Subject to the first sentence in this Section 2.04(a), if such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that a notice of prepayment of the Term Loan delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any prepayment of the Term Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. All payments made pursuant to this Section 2.04(a) shall be applied on a pro rata basis to each Lender.

(b) Mandatory. (i) Upon the incurrence or issuance by any Loan Party or any Company Group Party of any Indebtedness (other than Indebtedness not prohibited to be incurred or issued pursuant to Section 7.02), the Borrower shall prepay an aggregate principal amount of the Term Loan in an amount equal to 100% of all Net Cash Proceeds received by any Loan Party or Company Group Party therefrom, immediately upon receipt thereof by such Loan Party or such Company Group Party.

(ii) Following the consummation of the disposition contemplated by the Thor PSA, the Borrower shall prepay an aggregate principal amount of the Term Loan in an amount equal to the lesser of (a) 100% of all Net Cash Proceeds received by any Loan Party in respect of such disposition, and (b) the aggregate principal amount of the outstanding Term Loan together with all accrued and unpaid interest thereon and all other Obligations then due and owing (the lesser of clause (a) and (b), the "Prepayment Amount"). Such prepayment shall be made by the Borrower within two (2) Business Days of the receipt by any Loan Party of any Net Cash Proceeds referred to in the preceding clause (a).

(iii) If the Utah Solar Portfolio Acquisition is not consummated within five Business Days of the Closing Date, the Borrower shall prepay the aggregate principal amount of the Term Loans outstanding at such time. Such prepayment shall be made by the Borrower within five (5) Business Day following the Closing Date.

2.05 [Reserved].

2.06 Repayment of Loans. The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of the Term Loan outstanding on such date.

2.07 Interest. (a) Subject to the provisions of Section 2.07(b), (i) each Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Term SOFR for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) While any Event of Default under Sections 8.01(a), 8.01(f) or 8.01(g) exists, the Borrower shall pay interest on all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on the Term Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.08 Fees. The Borrower shall pay to the applicable Lenders and Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, except as expressly set forth in the Fee Letter.

2.09 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on the Term Loan for the day on which the Term Loan is made, and shall not accrue on the Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid, provided that a Term Loan that is repaid on the same day on which it is made shall, subject to Section 2.11, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.10 Evidence of Debt. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Term Loan in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Term Loan and payments with respect thereto.

2.11 Payments Generally; Administrative Agent's Clawback. (a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Term SOFR Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Term Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall prima facie evidence thereof.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for the Term Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make the Term Loan and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make the Term Loan or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make the Term Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for the Term Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for the Term Loan in any particular place or manner; provided that the Loan Parties will not be liable for increased costs under Sections 3.02 or 3.04 of this Agreement as a result of any Lender changing the place from, or the manner in which, it obtains funds.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

2.12 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of the Term Loan Facility due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Term Loan Facility due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Term Loan Facility due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of the Term Loan Facility owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Term Loan Facility owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations in respect of the Term Loan Facility owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact and (b) purchase (for cash at face value) participations in the Term Loan of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Term Loan Facility then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be; provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in the Term Loan to any assignee or participant; and

(iii) for the avoidance of doubt, the provisions of this Section will not apply to payments made under Sections 2.08, 3.01, 3.02, 3.04, 3.05, 11.04, 11.06, and pursuant to any other terms or conditions in any Loan Document expressly providing for payments to specific Lenders, Agents or other Persons.

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.13 [Reserved].

2.14 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, [reserved]; *third*, [reserved]; *fourth*, [reserved]; *fifth*, [reserved]; *sixth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, such Lender will cease to be a Defaulting Lender; provided, 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's having been a Defaulting Lender.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes. (a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. (i) 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 to the extent permitted by applicable Laws be made free and clear of and without deduction or withholding for any Taxes. If, however, applicable Laws require the Borrower, any other Loan Party or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower, such other Loan Party or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Borrower, any other Loan Party or the Administrative Agent shall be required by applicable Law to withhold or deduct any Taxes, including United States Federal withholding Taxes, from any payment under any Loan Document, then (A) it shall withhold or make such deductions as are determined by it to be required based upon the information and documentation received pursuant to subsection (e) below, (B) it shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Law and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower or other Loan Party, as the case may be, shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Tax Indemnifications. (i) Without limiting the provisions of subsection (a) or (b) above, the Loan Parties shall, and do hereby, jointly indemnify the Administrative Agent and each Lender, and shall make payment in respect thereof within 10 days after written demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Borrower, any other Loan Party or the Administrative Agent or paid by the Administrative Agent or such Lender, as the case may be, 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 Governmental Authority; provided that if the Loan Parties reasonably believe that such Taxes were not correctly or legally asserted, the Administrative Agent or such Lender, as applicable, will use reasonable efforts to cooperate with the Loan Parties to obtain a refund of such Taxes so long as such efforts would not, in the sole good faith determination of the Administrative Agent or such Lender, as applicable, result in any additional costs, expenses or risks or be otherwise disadvantageous to it; provided further that the Loan Parties shall not be required to compensate the Administrative Agent or any Lender pursuant to this Section 3.01(c) for any interest and penalties that would not have arisen but for the failure of the Administrative Agent or such Lender, as applicable, to furnish written notice of the applicable claim for Indemnified Taxes or Other Taxes within 180 days after the date the Administrative Agent or such Lender first receives written notice thereof. A certificate as to the amount of any such payment or liability delivered to the Borrower or any other Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a), (b) or (c)(i) above, each Lender shall, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by any Governmental Authority as a result of the failure by such Lender to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender pursuant to this Section 3.01. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) 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 Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower (or any other Loan Party) or the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation. (i) Each Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable Laws and reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Loan Parties or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to it pursuant to the Loan Documents or otherwise to establish such Lender's status for withholding Tax purposes in the applicable jurisdiction. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), Section 3.01(e)(ii)(B)(I), Section 3.01(e)(ii)(B)(II), Section 3.01(e)(ii)(B)(III), Section 3.01(e)(ii)(B)(IV) and Section 3.01(e)(iv) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent, on or prior to the date it becomes a party to this Agreement, two accurate and complete originally executed copies of Internal Revenue Service Form W-9 (or successor form) or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to establish an exemption from United States federal backup withholding; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of United States federal withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent, on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) two accurate and complete originally executed copies of Internal Revenue Service Form W-8BEN (or successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) two accurate and complete originally executed copies of Internal Revenue Service Form W-8ECI or W-8EXP (or successor form),

(III) two accurate and complete originally executed copies of Internal Revenue Service Form W-8IMY (or successor form) and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10-percent shareholder” of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) two accurate and complete originally executed copies of Internal Revenue Service Form W-8BEN (or successor form), or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(iii) Each Lender shall promptly (A) update any form or certification previously delivered pursuant to this Section 3.01(e) that expires or becomes obsolete or inaccurate in any respect or notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(iv) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(e)(iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If the Administrative Agent or any Lender determines, in its sole discretion, exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person. Notwithstanding anything to the contrary in this Section 3.01(f), in no event will the Administrative Agent or any Lender be required to pay any amount to the Borrower pursuant to this Section 3.01(f) the payment of which would place the Administrative Agent or such Lender, as the case may be, in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification (or with respect to which additional amounts were paid) 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.

(g) Status of Administrative Agent; Tax Documentation. Bank of America, as the Administrative Agent, and, if legally entitled to do so, any successor or supplemental Administrative Agent if and to the extent, in each case, it is not a United States person under Section 7701(a)(30) of the Code and is acting as Administrative Agent through a U.S. branch described in Treasury Regulation Section 1.1441-1(b)(2)(iv)(A), shall deliver to the Borrower two duly completed copies of Internal Revenue Service Form W-8IMY 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 a trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a United States person with respect to such payments (and the Borrower and the Administrative Agent agree to so treat the Administrative Agent as a United States person with respect to such payments as contemplated by Treasury Regulation Section 1.1441-1(b)(2)(iv)(A)), with the effect that the Borrower can make payments to the Administrative Agent without deduction or withholding of any Taxes imposed by the United States.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of such Lender to make or continue Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loan to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loan and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

3.03 Inability to Determine Rates.

(a) If in connection with any request for a Term SOFR Loan or a conversion of Base Rate Loans to Term SOFR Loans or a continuation of any such Loan, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan or in connection with an existing or proposed Base Rate Loan, or (ii) the Administrative Agent or the Required Lenders determine for any reason that Term SOFR for any requested Interest Period with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, then (x) the obligation of the Lenders to make or maintain Term SOFR Loans, or to convert Base Rate Loans to Term SOFR Loans, shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y) in the event of a determination described above that affects the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, or conversion to, or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Replacement of Term SOFR or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the “Scheduled Unavailability Date”);

then, on a date and time determined by the Administrative Agent (any such date, the “Term SOFR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant Interest Payment Date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR *plus* the SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the “Successor Rate”).

If the Successor Rate is Daily Simple SOFR *plus* the SOFR Adjustment, all interest payments will be payable on a quarterly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant Interest Payment Date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark. and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a “Successor Rate”. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero percent, the Successor Rate will be deemed to be zero percent for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

3.04 Increased Costs; Reserves on Term SOFR Loans.

(a) Increased Costs Generally. If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender);
- (ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Term SOFR Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or
- (iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Term SOFR Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, continuing, converting to or maintaining any Term SOFR Loan (or maintaining its obligations to make any Term SOFR Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Term Loan Commitment of such Lender or the Term Loan made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, and describing in reasonable detail the calculation thereof, and providing reasonable documentation to support the request as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of a Term Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Term Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for any reason other than the failure of such Lender to make a Term Loan) to prepay, borrow, continue or convert a Term Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain the Term Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

3.06 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a written notice pursuant to Section 3.02, then such Lender shall, as applicable, use reasonable efforts (which shall not require such Lender 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) to mitigate or reduce the additional amounts payable, which reasonable efforts may include designating a different Lending Office for funding or booking its Term Loan hereunder or assigning its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such change or other measure (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Loan Parties' obligations and all of the Lenders' and Administrative Agent's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all Obligations hereunder, any assignment of rights by (or the replacement of) a Lender and resignation of the Administrative Agent.

ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

The effectiveness of this Agreement and the obligation of each Lender to make its initial Credit Extension hereunder is subject to satisfaction or waiver in accordance with Section 11.01 of the following conditions precedent, on or prior to November 30, 2021:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or electronically transmitted copies of originals (followed as soon as reasonably practicable by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

- (i) executed counterparts of this Agreement;
- (ii) the Sixth Amendment to Revolving Credit Agreement, duly executed by the Required Lenders (under, and as defined in, the Revolving Credit Agreement), the Revolving Administrative Agent and each Loan Party;
- (iii) a Note executed by the Borrower in favor of each Lender requesting a Note;
- (iv) a pledge and security agreement, in substantially the form of Exhibit E (the "Security Agreement"), duly executed by each Loan Party, together with:

(A) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions required to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement,

(B) completed results of a search of the UCC filings made with respect to the Persons in the jurisdictions contemplated by the Collateral Questionnaire, dated on or before the Closing Date, listing all effective financing statements that name any Loan Party as debtor disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements are permitted by Section 7.01 or have been or will be contemporaneously released or terminated, and

(C) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Agreement required to perfect (subject to Section 4.7(b)) of the Security Agreement, in the case of IP Rights) the Liens created under the Security Agreement;

(v) the First Lien Pari Passu Intercreditor Agreement, duly executed by the Revolving Administrative Agent and each Loan Party;

(vi) (A) a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date, certifying (I) that attached thereto is a true and complete copy of each Organization Document of such Loan Party certified (to the extent applicable) as of a recent date by the Secretary of State (or equivalent Governmental Authority) of the state or jurisdiction of its organization, and a certificate as to the good standing of each Loan Party and each Company Group Party as of a recent date, from such Secretary of State, (II) that attached thereto is a true and complete copy of resolutions duly authorizing the execution, delivery and performance of the Loan Documents to which such person is a party, (III) as to the incumbency and specimen signature of each officer executing any Loan Document and (B) a certificate of another Responsible Officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to clause (A) above;

(vii) a favorable opinion of Baker Botts L.L.P., counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent;

(viii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in clauses (h) and (i) of Article IV have been satisfied and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(ix) the Closing Date Projections;

(x) certificates attesting to the Solvency of the Loan Parties, taken as a whole after giving effect to the Transaction, from the chief financial officer of Holdings; and

(xi) a completed Collateral Questionnaire dated the Closing Date and executed by a Responsible Officer of each Loan Party, together with all attachments contemplated thereby.

(b) (i) All fees required to be paid to the Administrative Agent and the Arranger on or before the Closing Date, including pursuant to the Fee Letter, shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date, including pursuant to the Fee Letter, shall have been paid.

(c) The Borrower shall have paid all reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent directly to such counsel to the extent invoiced within two Business Days prior to the Closing Date.

(d) At least three (3) Business Days prior to the Closing Date, (i) the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including 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) the “PATRIOT Act”) that has been requested at least ten (10) days prior to the Closing Date and (ii) any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(e) The Administrative Agent shall have received from Parent the Audited Financial Statements referred to in Section 5.05(a) and the unaudited financial statements referred to in Section 5.05(b) (it being understood that the audited financial statements filed on Form 10-K or Form 10-Q with the SEC shall satisfy the condition set forth in this clause (e)).

(f) No event, circumstance or change shall have occurred since the date of the Audited Financial Statements that has resulted, or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect or a material adverse change in, or material adverse effect upon, the operations, business, properties, liabilities or financial condition of the Project Companies taken as a whole.

(g) The representations and warranties of the Loan Parties contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by “materiality”, “Material Adverse Effect” or any similar qualifier, in which case, it shall be true and correct in all respects) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(h) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(i) The Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof.

Each Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Term SOFR Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in clauses (g) and (h) of this Article IV have been satisfied on and as of the date of the applicable Credit Extension.

Without limiting the generality of the provisions of clause (f) of Section 9.03, for purposes of determining compliance with the conditions specified in this Article IV, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Each of the Loan Parties represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power. Each Loan Party and each of their respective Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transaction and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or require any payment to be made under, (i) any material Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by such Person or any of its Subsidiaries (other than Liens created under the Collateral Documents); or (d) violate any material Law.

5.03 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or for the consummation of the Transaction, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection (subject to Section 4.7(b) of the Security Agreement in the case of IP Rights) or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) the authorizations, approvals, actions, notices and filings listed on Schedule 5.03, which will be sought, (ii) any immaterial actions, consents, approvals, registrations or filings, (iii) any additional filings in connection with any IP Rights acquired after the date hereof and (iv) approvals, consents, exemptions, authorizations, or other actions by, or notices to, or filings with, FERC or state regulatory authorities under the FPA or state laws respecting the rates of, or the financial or organizational regulation of, public utilities that may be required in connection with the exercise of certain foreclosure remedies allowed under the Loan Documents.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as the enforceability hereof or thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws now or hereafter in effect relating to creditors' rights generally (including specific performance) and (b) general equitable principles (whether considered in a proceeding in equity or at law), and to the discretion of the court before which any proceeding may be brought.

5.05 Financial Statements; No Material Adverse Effect. (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present, in all material respects, the financial condition of Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated balance sheets of Parent and its Subsidiaries dated September 30, 2021, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present, in all material respects, the financial condition of Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The Projections were prepared in good faith upon accounting principles consistent with the Audited Financial Statements and upon assumptions that are reasonable at the time made and at the time the related Projections are made available to the Administrative Agent and the Arranger, it being understood that the Projections are not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control (and that may be material) and that no assurance can be given that any Projection will be realized.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement, any other Loan Document or the consummation of the Transaction or (b) except as specifically disclosed in Schedule 5.06 or in SEC filings made prior to the Closing Date (the “Disclosed Litigation”), either individually or in the aggregate, if there is a reasonable possibility of an adverse determination and if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. No Default has occurred and is continuing or would result from the consummation of the Transactions.

5.08 Ownership of Properties. Each Loan Party and each of their respective Subsidiaries has good record and marketable title in all property used in the ordinary conduct of its business, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.09 Environmental Compliance.

(a) Each Loan Party and their respective Subsidiaries is in compliance in all material respects with the requirements of all Environmental Laws and all orders, writs, injunctions and decrees applicable to it or to its material properties under Environmental Law, except in such instances in which (a) such requirement of Environmental Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Each of the Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) (i) None of the properties currently or formerly owned or operated by any Loan Party or any of their respective Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party, any of their respective Subsidiaries or, to the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or any of their respective Subsidiaries; (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of their respective Subsidiaries; and (iv) Hazardous Materials have not been Released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any of their respective Subsidiaries that in each case referred to in clauses (i) through (iv) above individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

(d) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened Release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law, in each case that individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of their respective Subsidiaries have been disposed of in a manner not reasonably expected to result in liability to any Loan Party or any of their respective Subsidiaries that could reasonably be expected to have a Material Adverse Effect.

(e) There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority under any Environmental Law, by or against any Loan Party or any of its Subsidiaries or against any of their properties, either individually or in the aggregate, in respect of which there is a reasonable possibility of an adverse determination and which, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

Notwithstanding anything set forth in this Agreement or any other Loan Document to the contrary, the representations and warranties set forth in this Section 5.09 are the sole representations and warranties in any Loan Document with respect to environmental matters, including those relating to Environmental Laws or Hazardous Materials.

5.10 Insurance. The properties of the Loan Parties and their respective Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Party or its applicable Subsidiary operates.

5.11 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Loan Parties and each of their respective Subsidiaries have filed all Federal, state and other Tax returns and reports required to be filed, and have paid all Federal, state and other Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax assessment against the Loan Parties or any of their respective Subsidiaries that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any Tax sharing agreement. No Tax liability with respect to any of the Loan Parties or their respective Subsidiaries could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect.

5.12 ERISA Compliance. (a) Except as could not reasonably be expected to have a Material Adverse Effect: (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws; (ii) each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of the Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification; and (iii) the Borrower and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code.

(b) There are no pending or, to the knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as could not reasonably be expected to have a Material Adverse Effect: (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iii) neither the Borrower nor any ERISA Affiliate has incurred any liability that remains outstanding (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 of ERISA with respect to a Multiemployer Plan; and (iv) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA.

5.13 Subsidiaries; Equity Interests; Loan Parties; Project Companies. As of the Closing Date, no Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and to the extent constituting shares in a corporation, if any, are non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13, in the case of Pledged Equity, free and clear of all Liens except Liens set forth in Sections 7.01(a), (c), (g) and (r). As of the Closing Date, no Loan Party has any equity investments in any other Person other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and are owned by Holdings in the amounts specified on Part (c) of Schedule 5.13 free and clear of all Liens (other than Liens set forth in Sections 7.01(a), (c), (g) and (r)) except those created under the Collateral Documents. Set forth on Part (d) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Closing Date its jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number. Set forth on Part (e) of Schedule 5.13 is a complete and accurate list of each Project Company as of the Closing Date. Set forth on Part (f) of Schedule 5.13 is a complete and accurate list of each Company Group Party that is not a Loan Party as of the Closing Date.

5.14 Margin Regulations; Investment Company Act. (a) None of the Loan Parties is engaged and none of the Loan Parties will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. No portion of the proceeds of the Credit Extension shall be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, the Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

(b) None of the Loan Parties, or any of the Loan Parties' Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. Neither this Agreement nor any other document, certificate or written statement, in each case concerning any Loan Party or any Subsidiary thereof (expressly excluding projections and other forward-looking statements and, to the extent not prepared by Parent or its Subsidiaries, general market data and information of a general economic or industry specific nature), furnished to the Administrative Agent by or on behalf of any Loan Party in connection herewith contains, as of the date prepared and taken as a whole, any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein not materially misleading, in light of the circumstances under which they were made; provided that, to the extent any such other document, certificate or statement constitutes a forecast or projection, the Loan Parties represent only that they acted in good faith and utilized assumptions believed by them to be reasonable at the time made and furnished (it being understood that forecasts and projections are subject to significant contingencies and assumptions, many of which are beyond the control of the Loan Parties and their respective Subsidiaries, and that no assurance can be given that the projections or forecasts will be realized).

5.16 Compliance with Laws. Each Loan Party and each of their respective Subsidiaries is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its material properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Energy Regulatory Matters.

(a) Each Generation Portfolio Company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale meets the requirements for, and has been determined by FERC to be, either an "exempt wholesale generator" ("Exempt Wholesale Generator") within the meaning of PUHCA or such facilities meet the requirements of a "qualifying cogeneration facility" or a "qualifying small power production facility" (either a "Qualifying Facility") within the meaning of PURPA. The Loan Parties, the Company Group Parties and the Generation Portfolio Companies are not subject to or are exempt from regulation under PUHCA (other than, with respect to the Generation Portfolio Companies that own or operate facilities used for the generation, transmission, or distribution of electric energy for sale, maintaining status as a Qualifying Facility under PURPA or an Exempt Wholesale Generator within the meaning of PUHCA).

(b) Each of (i) the Generation Portfolio Companies that are a “public utility” within the meaning of the FPA and not otherwise exempt from regulation under Sections 205 and 206 of the FPA (“FPA-Jurisdictional Generation Portfolio Companies”) have a validly-issued order from FERC, not subject to any pending challenge or investigation: (x) authorizing it to engage in wholesale sales of electricity and, to the extent permitted under its market-based rate tariff, other products and services at market-based rates; and (y) granting such waivers and authorizations as are customarily granted to power marketers by FERC, including blanket authorizations to issue securities and assume liabilities pursuant to Section 204 of the FPA (together, “FPA MBR Authorizations, Exemptions and Waivers”). As of the Closing Date, FERC had not issued any orders imposing a rate cap, mitigation measure, or other limitation on the FPA MBR Authorizations, Exemptions and Waivers of the FPA-Jurisdictional Generation Portfolio Companies or any of the FPA-Jurisdictional Generation Portfolio Companies’ authority to engage in sales of electricity at market-based rates, other than rate caps and mitigation measures generally applicable to wholesale suppliers participating in the applicable FERC-jurisdictional electric market (although, to the knowledge of the Loan Parties, 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 Generation Portfolio Companies make wholesale sales under their market-based rate tariffs).

(c) Each of the Generation Portfolio Companies that are not a FPA-Jurisdictional Generation Portfolio Company (“Non-FPA-Jurisdictional Generation Portfolio Companies”) have made all filings with and obtained all authorizations necessary from the applicable Governmental Authority to generate electric energy and sell electric energy, capacity or ancillary services at wholesale or retail (“Non-FPA Sales Authorizations”).

(d) The Thermal Utilities are subject to state public utility commission regulation with respect to rates or financial organization.

(e) No Loan Party, Company Group Party or Project Company will, as the result of the ownership, construction, testing, repair, maintenance, use and/or operation of any facility or the sale of electricity and other services related to the sale of electricity from the facilities or the entering into of, or the performance of any obligations under any of the agreements to which any of them are a party or the consummation of any transaction contemplated thereby, be subject to regulation under the laws of any state governing the rates charged by, or the financial or organizational regulation of, electric utilities, electrical transmission and distribution utilities, retail electric utilities, electrical public utilities, electric public service companies, or other similar entities relating to the sale of electricity.

(f) None of the Lenders nor any “affiliate” (as that term is defined in PUHCA) of any of them will, solely as a result of each Generation Portfolio Company’s respective ownership, leasing or operation of its facility, the sale or transmission of thermal energy or electricity therefrom or the Borrower’s, any Loan Party’s, any Project Company’s, or any Generation Portfolio Company’s entering into any Loan Document, or any transaction contemplated hereby or thereby, be subject to regulation under the FPA, PUHCA, or state laws and regulations respecting the rates of, or the financial or organizational regulation of, public utilities, except that the exercise by the Administrative Agent or the Lenders of certain foreclosure remedies allowed under the Loan Documents may subject the Administrative Agent, the Lenders and their “affiliates” (as that term is defined in PUHCA) to regulation under the FPA, PUHCA or state laws respecting the rates of, or the financial or organizational regulation of, public utilities.

5.18 Intellectual Property; Licenses, Etc. Each Loan Party and each of its Subsidiaries owns, or possesses rights to use, all of the IP Rights that are reasonably necessary for the operation of their respective businesses, except where failure to so own or possess such right, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the conduct of the respective businesses of the Loan Parties or any of their respective Subsidiaries is not infringing upon any IP Rights owned by any other Person, except where such infringement could reasonably be expected to have a Material Adverse Effect.

5.19 Solvency. As of the Closing Date, each Loan Party, and the Loan Parties and their Subsidiaries taken as a whole, is Solvent.

5.20 Casualty, Etc. Neither the businesses nor the properties of any Loan Party or any of their respective Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.21 Labor Matters. Neither any Loan Party nor any of their respective Subsidiaries has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years, that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

5.22 Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Permitted Prior Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed on or prior to the Closing Date or as contemplated hereby or by the Collateral Documents (subject to Section 4.7(b) of the Security Agreement in the case of IP Rights), no filing or other action will be necessary to perfect or protect such Liens.

5.23 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions. The Borrower and its Subsidiaries and, to the knowledge of the Borrower, their respective officers, directors and employees, are not Sanctioned Persons. No Borrowing will be used, directly, or to the knowledge of the Borrower, indirectly, in violation of Anti-Corruption Laws or applicable Sanctions.

5.24 Restricted Payments. As of the A Closing Date, no Contractual Obligation limits the ability of any Subsidiary of the Borrower to make Restricted Payments, directly or through one or more intermediate Subsidiaries of the Borrower, to the Borrower or to otherwise transfer property to or invest in the Borrower, except for any agreement in effect on the date hereof and set forth on Schedule 5.24.

5.25 PATRIOT Act, Etc. To the extent applicable, each Loan Party and its Subsidiaries is in compliance, in all material respects, with (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. No part of the proceeds of the Term Loan will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, any of the foreign assets control regulations of the United States Treasury Department (31 C.F. R., Subtitle B, Chapter V, as amended), any Sanctions or any other applicable Anti-Corruption Law.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have a Term Loan Commitment hereunder or the Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied (in each case, other than Contingent Obligations as to which no claim has been made, Obligations in respect of Secured Cash Management Agreements and Obligations in respect of Secured Hedge Agreements) each of Holdings and the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Company Group Party to:

6.01 Financial Statements. Deliver to the Administrative Agent and each Lender, in form reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 120 days (or earlier as may be required for the filing of the Parent's financial statements by the SEC) after the end of each fiscal year of Parent (commencing with the fiscal year ended December 31, 2021), a consolidated balance sheet of Parent and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, commencing with the first fiscal year for which such corresponding figures are available, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than (x) as a result of the pending maturity of the Term Loan Facility or (y) a potential Event of Default as a result of the failure to comply with the financial covenants set forth in Section 7.11 (provided that, in the case of clause (y), the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower certifying as to the Borrower's intention to exercise the Cure Right));

(b) as soon as available, but in any event within 60 days (or earlier as may be required for the filing of the Parent's financial statements by the SEC) after the end of each of the first three fiscal quarters of each fiscal year of Parent (commencing with the fiscal quarter ended March 31, 2022), a consolidated balance sheet of Parent and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal quarter and for the portion of Parent's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, commencing with the first fiscal quarter for which such corresponding figures are available, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of Parent as fairly presenting, in all material respects, the financial condition, results of operations, shareholders' equity and cash flows of Parent and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(c) as soon as available, but in any event no later than the earlier of (i) twenty (20) Business Days following the occurrence of the annual investor earnings presentation with respect to Parent and (ii) ninety (90) days following the beginning of each fiscal year of Holdings, forecasts and projections prepared by management of Holdings consistent with the type of information that would be customarily found in earnings presentations delivered by public filing companies (it being understood that delivery of earnings presentation material that contain such forecasts and projections which are made available to the public shall be sufficient for purposes hereof) (the "Annual Projections").

6.02 Certificates; Other Information. Deliver to the Administrative Agent, in form reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal year ended December 31, 2021), (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of Parent or Holdings and (ii) a copy of management's discussion and analysis with respect to such financial statements;

(b) promptly after any request by the Administrative Agent, copies of any audit reports, management letters or recommendations submitted to the board of directors or similar governing authority (or the audit committee thereof) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them;

(c) promptly, and in any event within fifteen (15) Business Days after receipt thereof by any Loan Party or any Company Group Party, copies of (i) each amendment to any Organization Document of any Loan Party or any Company Group Party and (ii) each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party, any Company Group Party or Parent;

(d) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of their respective Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect;

(e) each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 6.01(a), a certificate of a Responsible Officer of the Borrower either confirming that there has been no change in the information set forth in the Collateral Questionnaire delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section 6.02(e), as applicable, and/or identifying any such changes;

(f) if the Borrower elects to have an Acquisition Period apply with respect to a Qualified Acquisition, written notice of such election no later than the earlier of (i) 10 Business Days following the Qualified Acquisition Closing Date with respect thereto and (ii) the date of delivery of the Compliance Certificate required under Section 6.02(a) for the fiscal quarter during which the Qualified Acquisition occurred; and

(g) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party, any Company Group Party or any Project Company, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time reasonably request.

Any documents required to be delivered pursuant to Section 6.01(a) or (b) may be delivered electronically (including by having been publicly filed with the SEC) and if so delivered, shall be deemed to have been delivered on the date (i) on which Parent posts such documents, or provides a link thereto on Parent's website on the Internet at the website address listed on Schedule 11.02; (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent has access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); or (iii) if publicly filed with the SEC, as of the date of such filing; provided that the Borrower shall promptly notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their respective securities for purposes of United States Federal and state securities laws (provided that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no Obligation to mark any Borrower Materials "PUBLIC." Unless otherwise marked "PUBLIC" all Borrower Materials will be presumed to be available for non-Public Lenders only.

6.03 Notices. Promptly notify the Administrative Agent:

- (a) of the existence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect (including as a result of a violation by any Loan Party or any of their respective Subsidiaries of, or a liability of any Loan Party or any of their respective Subsidiaries arising under, Environmental Laws);
- (c) within ten (10) days after any officer of a Loan Party knows of the occurrence of any ERISA Event that could reasonably be expected to have a Material Adverse Effect; and
- (d) of the making of any Holdings Tax Equity Payments.

Each notice pursuant to Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Except as could not reasonably be expected to result in a Material Adverse Effect, pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Company Group Party and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (except for Liens described in Section 7.01).

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all (i) issued patents and (ii) registered trademarks, trade names and service marks, in each case with respect to clauses (i) and (ii), owned by any Loan Party, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material tangible properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof, in each case, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to the Administrative Agent by the Borrower (or the Borrower's insurance agent and/or broker) of termination, lapse or cancellation of such insurance.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws (including the United States Foreign Corrupt Practices Act of 1977, 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 all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records. (a) Maintain proper books of record and account, in which true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the applicable Loan Party or such Company Group Party, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Company Group Party, as the case may be.

6.10 Inspection Rights. Permit representatives of the Administrative Agent to visit and inspect any of the properties of the Loan Parties and their respective material Subsidiaries, to examine the corporate, financial and operating records of the Loan Parties and their respective material Subsidiaries, and make copies thereof or abstracts therefrom, and to discuss the affairs, finances and accounts of the Loan Parties and their respective material Subsidiaries with the directors, officers, and independent public accountants of the Loan Parties, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided that the foregoing shall, unless an Event of Default has occurred and is continuing, occur not more than twice during any fiscal year of the Borrower; provided further, so long as no Event of Default shall have occurred and be continuing, any visit pursuant to this Section in excess of once per calendar year by the Administrative Agent shall be at the expense of the Lenders; provided further, however, that when an Event of Default exists the Administrative Agent may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions to consummate the Utah Solar Portfolio Acquisition, and not use, directly or, to the knowledge of the Borrower, indirectly, or otherwise make available such proceeds to any Subsidiary or any other Person 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 any Sanctions applicable to any party hereto.

6.12 Covenant to Give Security. (a) Upon the formation or acquisition of any new Company Group Party or Project Company (unless, in the case of a Company Group Party or Project Company that is not wholly owned by a Loan Party or Affiliate thereof, such Company Group Party's or Project Company's Organization Documents prohibit Liens on Equity Interests of such Company Group Party or such Project Company pursuant to the Security Agreement, or in the case of any Project Company, such Lien is prohibited due to the terms of any Project-Level Indebtedness or any Permitted Tax Equity Financing binding upon such Person or another Project Company that is the direct or indirect parent of such Person or expected to become binding upon such Person or another Project Company that is the direct or indirect parent of such Person within one hundred eighty (180) days (or such longer period not to exceed 270 days as is reasonably acceptable to the Administrative Agent), following its formation or acquisition by any Loan Party) owned directly by any Loan Party, then the Borrower shall, at the Borrower's expense, with respect to the Equity Interests in each such Company Group Party or Project Company:

(i) within 15 Business Days (or such longer period as may be agreed to by the Administrative Agent in its reasonable discretion) after such formation or acquisition, duly execute and deliver to the Administrative Agent Security Agreement Supplements and other security and pledge agreements, as specified by and in form and substance reasonably satisfactory to the Administrative Agent, together with all Pledged Equity issued by such Company Group Party or Project Company and owned by a Loan Party and other instruments of the type specified in clause (a)(iv) of Article IV, securing payment of all the Obligations of such Loan Party and constituting Liens on all such properties (provided that in no event shall such security interests or Liens apply to, in the case of any Foreign Subsidiary, more than 65% of the voting equity interests and 100% of non-voting equity interests in such Foreign Subsidiary; provided further, that in no event shall any Foreign Subsidiary or any direct or indirect Subsidiary of a Foreign Subsidiary be required to pledge or grant a security interest in any of its assets pursuant to this Section 6.12(a)(i));

(ii) within 15 Business Days (or such longer period as may be agreed to by the Administrative Agent in its reasonable discretion) after such formation or acquisition, cause the Loan Parties or their Subsidiaries to take whatever action (including the filing of Uniform Commercial Code financing statements and the giving of notices) may be necessary to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting first priority Liens (other than with respect to Permitted Prior Liens) on the properties purported to be subject to the Security Agreement Supplements and security and pledge agreements delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms; and

(iii) within 15 Business Days (or such longer period as may be agreed to by the Administrative Agent in its reasonable discretion) after such formation or acquisition, to the extent reasonably requested by the Administrative Agent, deliver to the Administrative Agent a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clauses (i) and (ii) above, and as to such other matters as the Administrative Agent may reasonably request and being substantially consistent with the opinions delivered pursuant to clause (a)(vii) of Article IV on the Closing Date.

(b) Subject to any limitations set forth in the Security Agreement with respect to particular types of assets or property, in the event that any Loan Party acquires any assets or property not referred to in Section 6.12(a) or any fee interest in any real property (with a fair market value, inclusive of fixtures located thereon, in excess of the greater of (i) \$20,000,000 and (ii) 0.50% of Total Assets in the case of such real property), or any Person owns any such assets or property at the time it becomes a Loan Party, and such assets, property or interest in real property have not otherwise been made subject to the Lien of the Collateral Documents in favor of the Administrative Agent, for the benefit of Secured Parties, then such Loan Party shall promptly take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, opinions and certificates, including those which are similar to those described in clause (a)(iv) of Article IV, with respect to each such asset, property or interest in real property (other than Excluded Assets (as defined in the Security Agreement)), that the Administrative Agent shall reasonably request to create in favor of the Administrative Agent, for the benefit of Secured Parties, a valid and perfected (subject to Section 4.7(b) of the Security Agreement in the case of IP Rights) first priority (other than with respect to Permitted Prior Liens) security interest in such assets, property or interest in real property. The Administrative Agent shall receive from the applicable Loan Party within 90 days following the date that such Loan Party acquires any fee interest in any real property with a fair market value, inclusive of fixtures located thereon, in excess of the greater of (i) \$20,000,000 and (ii) 0.50% of Total Assets (“Mortgaged Property”) (or such longer period of time as may be agreed to by the Administrative Agent in its reasonable discretion or as may be required to comply with the requirements of the last paragraph of this Section 6.12(b)) or, in the case of any real property owned by a Person at the time it becomes a Loan Party, within 90 days following the date that such Person becomes a Loan Party (or such longer period of time as may be agreed to by the Administrative Agent in its reasonable discretion or as may be required to comply with the requirements of the last paragraph of this Section 6.12(b)), the following documents and instruments:

(i) a mortgage duly authorized and executed, in proper form for recording in the recording office of each jurisdiction where such Mortgaged Property to be encumbered thereby is situated, in favor of the Administrative Agent, for the benefit of the Secured Parties, together with such other instruments as shall be necessary or appropriate (in the reasonable judgment of the Administrative Agent) to create a Lien under applicable law, all of which shall be in form and substance reasonably satisfactory to the Administrative Agent, which mortgage and other instruments shall be effective to create and/or maintain a first priority Lien on such Mortgaged Property, as the case may be, subject to no Liens other than Liens permitted by Section 7.01 applicable to such Mortgaged Property;

(ii) fully paid American Land Title Association Lender's Extended Coverage title insurance policies (the "Mortgage Policies"), with endorsements and in amounts reasonably acceptable to the Administrative Agent, issued, coinsured and reinsured by title insurers reasonably acceptable to and reasonably required by the Administrative Agent, insuring the mortgages to be valid first and subsisting Liens on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, other than Liens permitted by Section 7.01, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents and for zoning of the applicable property) and such coinsurance and direct access reinsurance as the Administrative Agent may deem reasonably necessary or desirable and are available in the relevant jurisdiction;

(iii) American Land Title Association/American Congress on Surveying and Mapping form surveys or such other forms of surveys as are reasonably acceptable to the Administrative Agent, including ExpressMaps prepared by First American Commercial Due Diligence Services, for which all necessary fees (where applicable) have been paid, and dated no more than 90 days before the date on which a mortgage in respect thereof is required to be delivered hereby (or such other dates as shall be reasonably acceptable to the Administrative Agent), either (i) certified by a land surveyor duly registered and licensed in the States in which the property described in such surveys is located and reasonably acceptable to the Administrative Agent, showing all buildings and other improvements, any off-site improvements, the location of any easements, parking spaces, rights of way, building set-back lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects reasonably acceptable to the Administrative Agent or (ii) as to ExpressMaps, in form and substance reasonably acceptable to the issuer of the Mortgage Policies to delete the standard survey exceptions and to issue endorsements to the same extent as such exceptions could have been deleted and such endorsements issued had an ALTA/ACSM Survey been provided rather than an ExpressMap;

(iv) all such other items as shall be reasonably necessary in the opinion of counsel to the Administrative Agent to create a valid and perfected first priority mortgage Lien on such Mortgaged Property, subject only to Liens permitted by Section 7.01;

(v) opinions of local counsel for the Loan Parties in states in which the Mortgaged Properties are located, with respect to the enforceability and validity of the mortgages and any related fixture filings in form and substance reasonably satisfactory to the Administrative Agent; and

(vi) to the extent any Mortgaged Property is subject to the provisions of the Flood Insurance Laws, (i) (x) concurrently with the delivery of the mortgage in favor of the Administrative Agent in connection therewith and (y) at any other time if necessary for compliance with applicable Flood Insurance Laws, a standard flood hazard determination form for such Mortgaged Property and (ii) if improvements located on such Mortgaged Property are located in an area designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), evidence of flood insurance in such amount as the Administrative Agent may from time to time reasonably require, and otherwise to ensure compliance with Flood Insurance Laws.

Notwithstanding anything contained in this Agreement to the contrary, no mortgage on any Mortgaged Property may be submitted for recording unless and until (x) the Administrative Agent and all Lenders have received at least thirty (30) days’ prior written notice thereof, together with a draft of such proposed mortgage and any other documents required pursuant to this Section 6.12(b) (each of which may be provided via email or via posting on any datasite to which the Lenders have access), and (y) the Administrative Agent has notified the Borrower in writing (which notice may be provided via email) that Administrative Agent has completed its flood insurance due diligence and compliance procedures with respect thereto.

(c) If any Loan Party is prohibited from providing a Lien on the Equity Interests it owns in a Project Company pursuant to the requirements of Section 6.12(a), due to the terms of any Project-Level Indebtedness or Permitted Tax Equity Financing entered into by such Project Company or any other Project Company that is the direct or indirect parent of such Project Company after the Closing Date, and such prohibition was not implemented by the Borrower or any of its Affiliates primarily to prevent such Equity Interests from being Collateral (as determined from the standpoint of the Borrower (rather than any lenders of Project-Level Indebtedness)), then the Borrower shall provide written notice of the foregoing to the Administrative Agent and any such Lien on such Equity Interests under the Loan Documents shall automatically be discharged and released without any further action by any Person effective as of the time of entering into of such Project-Level Indebtedness Document or Permitted Tax Equity Financing Document or containing such prohibition. The Administrative Agent hereby agrees to execute and deliver such documentation (including, without limitation, releases and UCC termination statements with respect to any such pledge) at the Borrower’s expense as the Borrower may reasonably request to evidence any such discharge and release provided for in this Section 6.12 and the Lenders hereby authorize the Administrative Agent to do so.

(d) In the event that any Subsidiary of any Loan Party which is a Project Company shall no longer constitute a Project Company or any Loan Party acquires any Subsidiary which is not a Project Company (unless, in the case of a Subsidiary that is not wholly owned by a Loan Party or Affiliate thereof, such Subsidiary’s Organization Documents prohibit the guarantee by such Subsidiary of the Obligations pursuant to the Guaranty or the granting of a security interest by such Subsidiary to secure the Obligations), and, in each case, such Subsidiary is not a Foreign Subsidiary, the Borrower shall (a) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Security Agreement within fifteen (15) Business Days of the date thereof (or up to twenty (20) Business Days of the date thereof if reasonably acceptable to the Administrative Agent) by executing and delivering to the Administrative Agent a Counterpart Agreement and a Joinder Agreement under, and as defined in, the Security Agreement and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements and certificates reasonably requested by the Administrative Agent, including those which are similar to those described in clauses (a)(iv), (v), (vi) and (vii) of Article IV, or joinders thereto, as applicable. With respect to each such Subsidiary, the Borrower shall promptly send to the Administrative Agent written notice setting forth with respect to such Subsidiary (i) the date on which such Subsidiary shall no longer constitute a Project Company or the date of acquisition of such Subsidiary, as applicable and (ii) all of the data required to be set forth in Schedule 5.13 with respect to all Subsidiaries of the Borrower.

Notwithstanding anything to the contrary herein or in any other Loan Document, any requirement to give the Administrative Agent possession or control of any Collateral will be satisfied if (i) such possession or control is given to the Revolving Administrative Agent and (ii) the First Lien Pari Passu Intercreditor Agreement is then in effect.

6.13 Compliance with Environmental Law. Except as could not reasonably be expected to have a Material Adverse Effect (i) comply, and cause all lessees and other Persons operating or occupying properties and facilities owned, leased or operated by it or the Company Group Parties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; (ii) timely obtain and renew all Environmental Permits necessary for the ownership, leasing, use, and operation of its and the Company Group Parties' properties; and (iii) if required pursuant to applicable Environmental Law, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its and the Company Group Parties' properties, in accordance with the requirements of all Environmental Laws; provided that neither the Loan Parties nor any of the Company Group Parties shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.14 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments and documents as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to perfect (subject to Section 4.7(b) of the Security Agreement in the case of IP Rights), preserve and maintain the validity, effectiveness and priority of the Guaranty, the Collateral Documents and the Liens intended to be created thereunder.

6.15 Maintenance of Energy Regulatory Authorizations and Status. (a) Each of the FPA-Jurisdictional Generation Portfolio Companies shall maintain and preserve its (i) FPA MBR Authorizations, Exemptions and Waivers and (ii) status as either an Exempt Wholesale Generator within the meaning of PUHCA or a Qualifying Facility under PURPA, except to the extent failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Each of the Non-FPA-Jurisdictional Generation Portfolio Companies shall maintain and preserve (i) its Non-FPA Sales Authorizations and (ii) to the extent such Non-FPA-Jurisdictional Portfolio Company owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale, its status as either an Exempt Wholesale Generator within the meaning of PUHCA or a Qualifying Facility under PURPA, except to the extent failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) Each of the Thermal Utilities shall maintain and preserve its authority under the appropriate state public utility commission to produce and sell thermal energy.

ARTICLE VII
NEGATIVE COVENANTS

So long as any Lender shall have a Term Loan Commitment hereunder or any Term Loan or other Obligation hereunder shall remain unpaid or unsatisfied (in each case, other than Contingent Obligations as to which no claim has been made, Obligations in respect of Secured Cash Management Agreements and Obligations in respect of Secured Hedge Agreements) the Borrower shall not, nor shall it permit any Company Group Party to, and, solely in the case of Section 7.17, Holdings shall not:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any renewals or extensions thereof; provided that (i) the property covered thereby is not changed (except for additions, improvements or other similar ancillary assets thereto), (ii) the amount secured thereby is not increased except as contemplated by Section 7.02(d), and except for underwriting, issuance and other related transaction fees and expenses and (iii) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(d);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 45 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts, contractual obligations and leases (in each case, other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);

(i) Liens on Equity Interests of Project Companies owned by Company Group Parties securing Project-Level Indebtedness or Permitted Tax Equity Financing or otherwise created pursuant to Contractual Obligations of such Project Company, or Liens on Equity Interests of Equity Investor Subsidiaries or other joint ventures owned by Company Group Parties securing Indebtedness of such Equity Investor Subsidiary or joint venture;

(j) 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 a banker's lien, including Section 4-210 of the UCC, and/or arising from customary contractual fee provisions, the reimbursement of funds advanced by a depository or intermediary institution (and/or its Affiliates) on account of investments made or securities purchased, indemnity, returned check and other similar provisions;

(k) 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;

(l) 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 Lien is created on such Equity Interest or undivided interest, as the case may be, as a result thereof;

(m) other Liens securing Indebtedness outstanding in an aggregate principal amount not to exceed the greater of (x) \$100,000,000 and (y) 10% of Unencumbered Total Assets (which shall be measured as of the date such Lien is created, incurred or assumed and shall take into account any Lien previously or concurrently created, incurred or assumed pursuant to this clause (m) and then outstanding as of such date);

(n) (i) Liens securing Indebtedness permitted by Section 7.02(k); provided that no such Lien incurred in connection with such Indebtedness shall extend to or cover property other than the respective property so acquired, and additions, improvements, warranties, and other similar assets, and the principal amount of Indebtedness secured by any such Lien shall at no time exceed the original purchase price of such property plus brokerage, acquisition, financing and other similar fees, costs and expenses and (ii) Liens existing on any property or asset prior to the acquisition thereof by any Company Group Party or existing prior to the time such Person becomes a Company Group Party on any property or asset of any Person that becomes a Company Group Party after the date hereof; provided that (A) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (B) such Lien shall not apply to any other property or asset of any Loan Party or Company Group Party and (C) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Company Group Party, as the case may be, and extensions, renewals and replacements thereof so long as the principal amount secured does not exceed the principal amount of the obligations being extended, renewed or replaced (plus any accrued but unpaid interest and premium thereon and fees, costs and expenses associated with such extensions, renewals and replacements);

(o) licenses and sublicenses of IP Rights in the ordinary course of business;

(p) Liens on cash or Cash Equivalents in an aggregate principal amount not to exceed \$40,000,000 at any time pledged by a Company Group Party or the Borrower to secure Swap Contracts permitted under Section 7.02(a); and

(q) Liens securing Incremental Equivalent Debt incurred pursuant to Section 7.02(p) and any Permitted Refinancing Indebtedness in respect thereof; and

(r) Liens securing the "Obligations" as defined in the Revolving Credit Agreement, provided that the Revolving Administrative Agent shall be a party to, and subject such Liens to the requirements of, the First Lien Pari Passu Intercreditor Agreement.

7.02 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) obligations (contingent or otherwise) (i) of the Borrower existing or arising under any Swap Contract in respect of interest rates on the Term Loan or Incremental Equivalent Debt; provided that (x) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates and (y) such Swap Contract is not for speculative purposes and (ii) of the Borrower or any Company Group Party existing or arising under any other Swap Contract entered into in the ordinary course of business; provided that such Swap Contract is not for speculative purposes;

(b) Indebtedness of a Company Group Party owed to the Borrower or a wholly-owned Company Group Party, which Indebtedness shall (i) in the case of Indebtedness owed to a Loan Party, constitute "Pledged Debt" under the Security Agreement and (ii) be otherwise permitted under the provisions of Section 7.03(c), (f) or (j);

(c) Indebtedness under the Loan Documents;

(d) (i) Indebtedness outstanding on the Closing Date and listed on Schedule 7.02(d) and any Permitted Refinancing Indebtedness in respect thereof and (ii) Indebtedness constituting the Bridge Financing and any Permitted Refinancing Indebtedness (but without giving effect to clause (b) of the definition thereof) in respect thereof;

(e) Guarantees by any Loan Party in respect of Indebtedness otherwise permitted hereunder of any other Loan Party, and Guarantees by any Company Group Party that is not a Loan Party in respect of Indebtedness otherwise permitted hereunder of any other Company Group Party that is not a Loan Party;

(f) the incurrence by the Borrower or any Company Group Party 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;

(g) the incurrence by the Borrower or any Company Group Party of Indebtedness consisting of (i) workers' compensation claims and self-insurance obligations and (ii) surety, performance, statutory or appeal bonds or similar obligations in the ordinary course of business;

(h) the incurrence of Indebtedness that may be deemed to arise as a result of agreements of the Borrower or any Company Group Party 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 permitted hereunder; provided that the aggregate maximum liability associated with such provisions may not exceed the gross proceeds (including non-cash proceeds) of such disposition;

(i) Indebtedness of the Borrower or any Company Group Party 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;

(j) (i) Guarantees and/or other credit support by a Company Group Party of Indebtedness of a Project Company directly or indirectly owned by such Company Group Party to the extent such Guarantees are required by the terms of Project-Level Indebtedness; (ii) Guarantees and/or other credit support by the Borrower of Indebtedness of a Project Company that constitute an Investment in such Project Company permitted by Section 7.03(c)(i) and/or Section 7.03(c)(iii)(A) and/or (B) (which Guarantees and/or other credit support will be deemed to be an Investment pursuant to such Section 7.03(c)(i) and/or 7.03(c)(iii)(A) and/or (B)); (iii) to the extent constituting Indebtedness and otherwise permitted by Section 7.03(c), (f) or (j), Letters of Credit, surety, performance, statutory or appeal bonds and other credit support by a Company Group Party to any Subsidiary or joint venture of such Company Group Party; and (iv) (A) Permitted Guarantees and obligations in respect of Letters of Credit and/or (B) other credit support in respect of obligations that otherwise could have been guaranteed pursuant to a Permitted Guarantee.

(k) the incurrence by the Borrower or any Company Group Party of Indebtedness represented by obligations in respect of Capitalized Leases, 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 Company Group Party 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 (k), not to exceed at any time outstanding (x) in the case of property (real or personal) that, following the purchase thereof, is intended to be contributed to one or more Project Companies, an amount equal to 10% of Unencumbered Total Assets (which shall be measured as of the date such Indebtedness is created, incurred or assumed and shall take into account any Indebtedness previously or concurrently created, incurred or assumed pursuant to this clause (k)(x) and then outstanding as of such date) (provided that, following such contribution to one or more Project Companies, such amount shall be reinstated in the amount of the Capitalized Lease, mortgage financing or purchase money obligation actually contributed to the applicable Project Company (so long as the Borrower and Company Group Parties are no longer liable with respect to such Capitalized Lease, mortgage financing or purchase money obligation)) and (y) in all other cases, \$50,000,000;

(l) Indebtedness of the Borrower and/or a Company Group Party in an aggregate principal amount not to exceed the greater of (i) \$100,000,000 and (ii) 2.00% of Total Assets (which shall be measured as of the date such Indebtedness is created, incurred or assumed and shall take into account any Indebtedness previously or concurrently created, incurred or assumed pursuant to this clause (l) and then outstanding as of such date) at any time outstanding for all such Persons;

(m) Indebtedness of the Borrower or any Company Group Party consisting of obligations under deferred compensation, deferred purchase price, earn-outs or similar arrangements incurred in connection with any acquisition permitted under Section 7.03(g), (i) or (j);

(n) (x) Indebtedness incurred by a Loan Party and owed to the Equity Investor and (y) Indebtedness incurred by the Borrower and owed to the Parent (including the Parent CSN Proceeds Loan); provided that, in the case of each of clauses (x) and (y), (i) except in the case of the Parent CSN Proceeds Loan, such Indebtedness is subordinated to the Obligations on terms and conditions substantially in the form of Exhibit H (which subordinated debt may allow for interest payments in cash and payments of principal to the extent such payments could be made under Section 7.06(f)); provided that (A) if the Convertible Senior Notes shall no longer exist for any reason or (B) following the conversion of all of the outstanding Convertible Senior Notes into equity pursuant to the terms thereof, in the case of each of the foregoing clauses (A) and (B), payments may continue to be made with respect to the Parent CSN Proceeds Loan only if such Indebtedness is subordinated to the Obligations on terms and conditions substantially in the form of Exhibit H, (ii) immediately before and immediately after giving effect to the incurrence of any such Indebtedness, no Default or Event of Default shall have occurred and be continuing and (iii) immediately after giving effect to the incurrence of such Indebtedness, the Borrower shall be in pro forma compliance with the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) (provided that in the case of any Indebtedness incurred by the Borrower pursuant to the preceding clause (y) at any time from and after the Closing Date until but not including the date of delivery of the audited financial statements for the fiscal year ended December 31, 2021 in accordance with Section 6.01(a), the financial calculations for determining compliance with the preceding clause (iii) shall be based upon the financial information delivered to the Administrative Agent pursuant to clause (e) of Article IV) or (b), as though such Indebtedness had been incurred as of the first day of the most recently completed Measurement Period and remained outstanding;

(o) unsecured guarantees by (x) the Borrower of the Indebtedness represented by the Convertible Senior Notes and (y) any Company Group Party of the Indebtedness represented by the Convertible Senior Notes, but solely in the case of this clause (y) to the extent that such Company Group Party guarantees the Obligations;

(p) senior secured first lien or junior lien debt securities or term loans or revolving credit facilities, senior unsecured debt securities or term loans or subordinated debt securities or term loans, in each case borrowed by the Borrower or issued by the Borrower in a public offering, Rule 144A or other private placement or bridge financing in an amount not to exceed the Incremental Equivalent Facility Amount minus the outstanding principal amount and/or commitments, as applicable, of any other Indebtedness incurred pursuant to this clause (p) on or prior to the date of the incurrence of any such Indebtedness pursuant to this clause (p) (such Indebtedness, “Incremental Equivalent Debt”); *provided* that (i) no Event of Default shall exist before or after giving effect to the incurrence of such Incremental Equivalent Debt; (ii) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by “materiality”, “Material Adverse Effect” or any similar qualifier, in which case, it shall be true and correct in all respects) on and as of the date of incurrence of such Incremental Equivalent Debt, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 7.02(p), the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01; *provided* that to the extent that such Incremental Equivalent Debt will be used concurrently with the initial provision of such Incremental Equivalent Debt to finance any Investment permitted pursuant to Section 7.03(g), then such representations and warranties shall be limited to customary “SunGard” representations and warranties (including those with respect to the target contained in the acquisition or merger agreement to the extent failure of such representations and warranties to be true and correct permits the Borrower or relevant Affiliate thereof not to consummate the transactions contemplated thereby), (iii) such Incremental Equivalent Debt shall not be Guaranteed by any Person that is not a Guarantor; (iv) subject to the limitations in clauses (v) and (vi) below, the terms and provisions of such Incremental Equivalent Debt shall not be more restrictive, taken as a whole, to the Borrower and the other Loan Parties than those applicable to the Term Loan Facility at the time of incurrence of such Incremental Equivalent Debt, unless such other terms (1) apply only after the Maturity Date, (2) shall also apply to the Term Loan Facility (which such application shall not require the consent of the Lenders or the Administrative Agent if so reasonably determined by the Borrower) or (3) relate only to mandatory prepayments customary for such type of debt securities or revolving or term loan facilities, premiums (including make-whole provisions), interest, fees or (subject to the foregoing) maturity or amortization; (v) the Weighted Average Life to Maturity of such Incremental Equivalent Debt shall be no shorter than that of the Term Loan Facility; (vi) the Stated Maturity of such Incremental Equivalent Debt shall be no shorter than the Maturity Date; and (vii) if such Incremental Equivalent Debt is in the form of secured Indebtedness, a representative acting on behalf of the holders of such Incremental Equivalent Debt shall be a party to or shall have executed and delivered a joinder to the Pari Passu Intercreditor Agreement or the Second Lien Intercreditor Agreement, as applicable, to the Administrative Agent in accordance with the terms thereof; *provided* that if such Indebtedness is the initial issuance of Indebtedness designated as “Second Lien Obligations” thereunder, then the Borrower, the Guarantors, the Administrative Agent and the representative for such Indebtedness shall have executed and delivered the Second Lien Intercreditor Agreement;

(q) other senior unsecured Indebtedness of the Borrower; provided that (i) no Default or Event of Default shall exist before or after giving effect to the incurrence of such Indebtedness and (ii) the Borrower shall be in pro forma compliance with the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b), as though such Indebtedness had been incurred as of the first day of the most recently completed Measurement Period and remained outstanding; and

(r) Indebtedness incurred under the Revolving Credit Agreement (including, for the purposes hereof, the face amount of Letters of Credit issued and outstanding thereunder) in an aggregate principal amount not to exceed \$495,000,000.

7.03 Investments. Make or hold any Investments, except:

(a) Investments held by the Borrower and the Company Group Parties in the form of cash and Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Company Group Parties in an aggregate amount not to exceed \$2,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by the Borrower and the Company Group Parties in their respective Subsidiaries in an amount equal to the sum of (A) amounts outstanding on the date hereof, plus (B) any returns thereon from and after the date hereof that do not constitute Available Cash;

(ii) Investments by the Borrower or any Company Group Party in the Borrower or another Company Group Party wholly-owned, directly or indirectly, by the Borrower; and

(iii) Investments by the Borrower or a Company Group Party in a Subsidiary owned, in whole or in part, by it on the Closing Date, plus Investments that would be permitted by Section 7.03(g) (without giving effect to clause (iii)(y)(B) thereof) and other Investments, in each case made from, without duplication, (A) an issuance of Equity Interests or debt by Parent that is contributed to or loaned, in each case within six months prior to the date of such Investment (subject to the delivery of a certificate from a Responsible Officer certifying that the proceeds used to finance such Investment were derived from such contribution or loan) to Holdings, and by Holdings to the Borrower, on a subordinated basis in the form of Indebtedness of Holdings or the Borrower (as applicable) permitted by Section 7.02(n), that does not constitute Available Cash or (B) Available Cash that is not being used to support Other Permitted Guarantees as contemplated by clause (b) of the definition thereof pursuant to Section 7.02(j)(iv) or Section 7.03(e);

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors;

(e) to the extent constituting Investments, (x) Guarantees permitted by Section 7.02 and (y) Permitted Guarantees;

(f) Investments existing on the Closing Date (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 7.03(f);

(g) (i) the formation of any Person in connection with a Permitted Tax Equity Financing, (ii) the purchase or other acquisition of all or any portion of the Equity Interests in any Person, (iii) the purchase by any Company Group Party of all or substantially all of the property of any Person, in each case, where the Equity Interests in, or the assets of, such Person, upon the consummation of such formation, transaction, purchase or other acquisition, will be owned directly by the Borrower or one or more of the Company Group Parties (including as a result of a merger or consolidation with a Company Group Party); provided that, with respect to each formation, transaction, purchase or other acquisition made pursuant to this Section 7.03(g):

(w) the Loan Parties shall comply with the requirements of Section 6.12, to the extent applicable;

(x) the lines of business of the Person to be (or the property of which is to be) so formed, purchased or otherwise acquired shall be substantially the same lines of business as one or more of the principal businesses of the Borrower and its Subsidiaries in the ordinary course (including, for the avoidance of doubt, the ownership, lease or development of energy generating, transmission or distribution assets, or assets related thereto, or of any other power or energy facility, or any assets relating to any of the foregoing);

(y) (A) immediately before and immediately after giving pro forma effect to any such formation, transaction, purchase or other acquisition, no Event of Default shall have occurred and be continuing and (B) immediately after giving effect to such formation, transaction, purchase or other acquisition, the Borrower and its Subsidiaries shall be in pro forma compliance with all of the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such formation, transaction, purchase or other acquisition had been consummated as of the first day of the four quarter period covered thereby, and the Borrower shall deliver to the Administrative Agent a certificate of its chief executive officer, chief financial officer, treasurer or controller demonstrating such compliance calculations for this clause (B) in reasonable detail; and

(z) the Borrower shall have delivered to the Administrative Agent and each Lender, solely with respect to the consummation of any Qualified Acquisition, at least one Business Day prior to the date on which any such Qualified Acquisition is to be consummated (provided that if no Borrowing will be made in connection with such Qualified Acquisition, the Borrower shall deliver to the Administrative Agent and each Lender the following certificate no later than thirty (30) days following the closing date of such Qualified Acquisition), a certificate of a Responsible Officer certifying that all of the requirements set forth in this clause (g) have been satisfied or will be satisfied on or prior to the consummation of such formation, transaction, purchase or other acquisition (or, in the case of clause (g)(i), will be satisfied within the periods required by Section 6.12).

(h) to the extent (if any) constituting an Investment, Swap Contracts permitted by Section 7.02(a);

(i) to the extent constituting an Investment, Investments made pursuant to the RoFo Agreement; provided that, with respect to each Investment made pursuant to this Section 7.03(i):

(x) the Loan Parties shall comply with the requirements of Section 6.12, to the extent applicable;

(y) (A) immediately before and immediately after giving pro forma effect to any such Investment, no Default shall have occurred and be continuing and (B) immediately after giving effect to such Investment, Borrower and its Subsidiaries shall be in pro forma compliance with all of the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such Investment had been consummated as of the first day of the four quarter period covered thereby, and the Borrower shall deliver to the Administrative Agent a certificate of its chief executive officer, chief financial officer, treasurer or controller demonstrating such compliance calculations in reasonable detail; and

(z) the Borrower shall have delivered to the Administrative Agent and each Lender, at least three Business Days prior to the date on which any such Investment is to be consummated, a certificate of a Responsible Officer certifying that all of the requirements set forth in this clause (i) have been satisfied or will be satisfied on or prior to the consummation of such Investment; and

(j) so long as no Default has occurred and is continuing or would result from such Investment, any other Investments made since the Closing Date in an amount not to exceed the greater of (i) \$150,000,000 and (ii) 2.00% of Total Assets (which shall be measured as of the date such Investment is made and shall take into account any Investment previously or concurrently made pursuant to this clause (j) and then held as of such date) in the aggregate.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Unencumbered Company Group Party may merge with (i) the Borrower; provided that the Borrower shall be the continuing or surviving Person, or (ii) any Company Group Party; provided that when any Guarantor is merging with another Company Group Party, such Guarantor shall be the continuing or surviving Person and when any wholly-owned Company Group Party is merging with another Company Group Party, such wholly-owned Company Group Party shall be the continuing or surviving person;

(b) (x) any Company Group Party that is a Loan Party may dispose of all or substantially all of its assets (including any Disposition that is in the nature of a liquidation) to (i) another Company Group Party that is a Loan Party or (ii) to the Borrower and (y) any Company Group Party that is not a Loan Party may dispose of all or substantially all of its assets (including any Disposition that it is the nature of a liquidation) to any Guarantor; and

(c) in connection with any acquisition permitted under Section 7.03, any Company Group Party may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that the Person surviving such merger shall be a wholly-owned Company Group Party.

7.05 Dispositions. Make any Disposition or, in the case of any Company Group Party, issue, sell or otherwise transfer or dispose of any of its Equity Interests, except:

(a) Dispositions of obsolete, damaged, surplus or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property, or issuances of its Equity Interests, by any Company Group Party to the Borrower or to a Company Group Party that is wholly-owned, directly or indirectly, by the Borrower;

(e) Dispositions permitted by Sections 7.04 or 7.06;

(f) Dispositions by the Borrower and the Company Group Parties not otherwise permitted under this Section 7.05; provided that, (i) no Default has occurred and is continuing at the time of and immediately after giving effect to such Disposition and (ii) only if the relevant Disposition is in excess of \$20,000,000, after giving effect to such Disposition, the Borrower shall be in pro forma compliance with all of the covenants set forth in Section 7.11 as if such Disposition had occurred on the first day of the applicable Measurement Period, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) (or, if no such information has yet been delivered, pursuant to clause (e) of Article IV);

(g) Disposition of cash or Cash Equivalents;

(h) licenses and sublicenses of IP Rights in the ordinary course of business; and

(i) lapse, abandonment, expiration or other Disposition of any IP Rights that are immaterial or otherwise determined by the Borrower or any Company Group Party to be no longer economically practicable to maintain, worth the cost of maintaining, or used or useful in any material respect, or the expiration of IP Rights in accordance with their respective statutory terms,

provided that any Disposition pursuant to Section 7.05(b),(c) and (f) shall be for fair market value.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, except that:

(a) each Company Group Party may make Restricted Payments to the Borrower, or to any other Person that owns a direct Equity Interest in such Company Group Party, ratably according to their respective holdings of the type of Equity Interests in respect of which such Restricted Payment is being made;

(b) the Borrower and each Company Group Party may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Borrower and each Company Group Party may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests;

(d) the Borrower may declare and pay dividends in cash or Cash Equivalents to Holdings not to exceed an amount necessary to permit Holdings and Parent to pay (i) reasonable and customary corporate (including appropriate allocations of shared costs and expenses of the corporate group of the Equity Investor) and operating expenses (including reasonable out-of-pocket expenses for legal, administrative and accounting services provided by third parties, umbrella insurance costs, and compensation, benefits and other amounts payable to officers and employees in connection with their employment in the ordinary course of business) and (ii) so long as the Borrower is properly treated as a disregarded entity and Holdings is properly treated as a partnership for U.S. federal and applicable state and local income tax purposes, distributions to Holdings which distributions shall be used by its equity holders to discharge the relevant U.S. federal, state and local income tax liabilities of such equity holders attributable to the Borrower; provided that the amount of any distribution pursuant to this clause (ii) shall not exceed the amount that the Borrower would be required to pay in respect of the relevant U.S. federal, state and local income taxes were it to pay such taxes as a stand alone corporate taxpayer, taking into account any net operating loss carryovers and other tax attributes arising from the Closing Date; provided, further, that any distribution pursuant to this clause (ii) shall be used to discharge the relevant tax liability of each such equity owner within 90 days of the distribution;

(e) the Borrower and each Company Group Party may issue common Equity Interests to a Loan Party or, in the case of a Company Group Party, another Company Group Party, in each case that is its direct parent;

(f) so long as no Default has occurred and is continuing or would result from such Restricted Payment, the Borrower may declare and pay dividends in cash or Cash Equivalents to Holdings from Available Cash that is not being used to support Other Permitted Guarantees as contemplated by clause (b) of the definition thereof pursuant to Section 7.02(j)(iv) or 7.03(e); provided that immediately after giving effect to such dividend payment or other distribution, the Borrower shall be in pro forma compliance with all of the covenants set forth in Section 7.11;

(g) the Borrower may declare and pay dividends in cash or Cash Equivalents to Holdings not to exceed an amount necessary to permit Holdings and Parent to pay franchise fees or similar taxes and fees required to maintain its corporate existence;

(h) the Borrower may make Restricted Payments pursuant to the Exchange Agreement;

(i) to the extent constituting a Restricted Payment, the Borrower may make Restricted Payments as required pursuant to the Management Services Agreement to (i) pay monitoring, consulting, management, transaction, advisory, termination or similar fees payable to the Equity Investor and indemnities, reimbursements and reasonable and documented out-of-pocket fees and expenses of the Equity Investor in connection therewith and (ii) reimburse the Equity Investor for costs and expenses of Holdings and its Subsidiaries incurred in the ordinary course of business, overhead costs and expenses and fees (including administrative, legal, accounting, insurance, cash management, reporting and compliance and/or similar expenses provided by third parties as well as trustee, directors, managers and general partner fees) which are paid by the Equity Investor on behalf of Holdings or its applicable Subsidiary; and

(j) (i) the Borrower shall be permitted to make payments of principal and interest under the Parent CSN Proceeds Loan so long as the proceeds thereof are directly used to make corresponding payments of principal, interest and other amounts due and payable under the Convertible Senior Notes or (ii) the Borrower may declare and pay dividends to Holdings so as to enable Holdings to satisfy demands made against Holdings under the unsecured guarantee of Holdings of the Indebtedness represented by the Convertible Senior Notes.

7.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Company Group Parties on the Closing Date (including, for the avoidance of doubt, the ownership, lease or development of energy generating, transmission or distribution assets, or assets related thereto, or of any other power or energy facility, or any assets relating to any of the foregoing) or any business substantially related or incidental thereto, or permit the Project Companies, taken as a whole, to do the same.

7.08 Transactions with Affiliates. Consummate any transaction of any kind with any of its Affiliates, whether or not in the ordinary course of business, other than:

(a) on fair and reasonable terms substantially as favorable to the Borrower or such Company Group Party as would be obtainable by the Borrower or such Company Group Party at the time in a comparable arm's length transaction with a Person other than an Affiliate thereof;

(b) a transaction between or among one or more of the Borrower and the Company Group Parties;

- (c) any employment agreement or director's engagement agreement, employee benefit plan, officer and director indemnification agreement or any similar arrangement entered into by the Borrower or any Company Group Party and approved by a Responsible Officer of the Borrower in good faith;
- (d) any issuance of Equity Interests (other than Disqualified Equity Interests) of the Borrower or any Company Group Party;
- (e) Restricted Payments that do not violate the provisions of Section 7.06;
- (f) 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;
- (g) the existence of, or the performance by the Borrower or any Company Group Party 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 that the existence of, or the performance by the Borrower or any of the Company Group Parties of its 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 7.08(g) 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 than those such agreements to which the Borrower or the Company Group Parties, as applicable, are party as of Closing Date;
- (h) transactions required pursuant to the RoFo Agreement and the Exchange Agreement;
- (i) licenses and sublicenses of IP Rights in the ordinary course of business;
- (j) transactions pursuant to the Management Services Agreement;
- (k) the incurrence by the Borrower of the Parent CSN Proceeds Loan on the terms substantially similar to those in effect on January 31, 2014 (other than payment terms, which may be substantially similar to (or more favorable to the Borrower than) the payment obligations of the Parent under the corresponding Convertible Senior Notes) and disclosed to the Administrative Agent and without giving effect to any amendments, restatements, supplements or other modifications thereof occurring after such date that would be materially adverse to the interests of the Lenders or the Administrative Agent in their respective capacities as such; or
- (l) Permitted Guarantees.

7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Company Group Party to make Restricted Payments to the Borrower or to otherwise transfer property to or invest in the Borrower, except for any agreement in effect on the Closing Date and set forth on Schedule 7.09 or (ii) of any Loan Party (other than South Trent Holdings LLC (to the extent such restrictions exist in agreements in respect of Indebtedness thereof in effect as of the Closing Date)) to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; provided that this clause (ii) shall not prohibit any negative pledge incurred or provided in connection with Indebtedness permitted under Section 7.02(j) (solely to the extent any such negative pledge relates to Equity Interests subject to a Lien permitted by Section 7.01(i)) or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person (other than in respect of Indebtedness permitted under Section 7.02(p), Section 7.02(q) or the Bridge Financing (provided that, in the case of the Bridge Financing, such Contractual Obligation shall be on customary terms for equal and ratable springing lien provisions in similar debt instruments in light of then prevailing market conditions)).

7.10 Use of Proceeds. Use the proceeds of the Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenants.

(a) Borrower Leverage Ratio. Commencing with the fiscal quarter ending December 31, 2021, and as of the last day of each fiscal quarter thereafter, permit the Borrower Leverage Ratio for the most recently completed Measurement Period to be greater than (i) on any date of determination other than during an Acquisition Period, 5.50:1.00 or, during the period from the Closing Date through and including the Leverage Period Termination Date, 6.00:1.00, and (ii) on any date of determination during an Acquisition Period 6.00:1.00 or, during the period from the Closing Date through and including the Leverage Period Termination Date, 6.50:1.00; and

(b) Borrower Interest Coverage Ratio. Commencing with the fiscal quarter ending December 31, 2021 and as of the last day of each fiscal quarter thereafter, permit the Borrower Interest Coverage Ratio for the most recently completed Measurement Period to be less than 1.75:1.00.

7.12 Sanctions. Directly or indirectly, use the proceeds of the Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary of the Borrower or any Company Group Party, or to any Equity Investor Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent or otherwise) of Sanctions.

7.13 Amendments of Organization Documents. Amend any of the Organization Documents of any such Person, other than amendments that do not, taken as a whole, materially adversely affect the interests of any Agent, any Lender or any Secured Party in their capacity as such.

7.14 Accounting Changes. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

7.15 Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any unsecured Indebtedness, junior Lien Indebtedness or any Indebtedness which is contractually subordinated to the Obligations, except (a) regularly scheduled payments of principal and interest in respect of such Indebtedness in accordance with the terms of, and only to the extent required by, and subject to any subordination provisions contained in, the indenture or other agreement pursuant to which such Indebtedness was issued or incurred or any subordination agreement (including any subordination agreement entered into pursuant to Section 7.02(n)) in respect of such Indebtedness (*provided* that such regularly scheduled payments of principal shall not exceed 1.00% per annum of the aggregate principal amount of such Indebtedness), (b) prepayments and repayments of such Indebtedness made from cash of the Borrower that at such time would be permitted to be distributed to Holdings pursuant to Section 7.06(f), (c) prepayments and repayments of such Indebtedness made with the proceeds of Permitted Refinancing Indebtedness in respect thereof, (d) following the Leverage Period Termination Date, prepayments and repayments of such Indebtedness, unless (i) as result thereof and giving pro forma effect thereto and to any Indebtedness incurred in connection therewith (as though such Indebtedness had been incurred as of the first day of the most recently completed Measurement Period and remained outstanding), the Borrower Leverage Ratio for the most recently completed Measurement Period would be greater than 5.50:1.00, (ii) as result thereof and giving pro forma effect thereto and to any Indebtedness incurred in connection therewith (as though such Indebtedness had been incurred as of the first day of the most recently completed Measurement Period and remained outstanding), the Borrower Interest Coverage Ratio for the most recently completed Measurement Period would be less than 1.75:1.00 or (iii) an Event of Default has occurred and is continuing or would result from such prepayment or repayment, (e) other prepayments, repayments, redemptions or similar transactions in an amount not to exceed the greater of (i) \$50,000,000 and (ii) 1.00% of Total Assets (which shall be measured as of the date such transaction is consummated and shall take into account any transaction previously or concurrently consummated pursuant to this clause (e)) and (f) prepayments and repayments of the Convertible Senior Notes with the proceeds of the Bridge Financing or any Permitted Refinancing Indebtedness in respect of the Bridge Financing.

7.16 [Reserved].

7.17 Holding Company. In the case of Holdings, engage in any business, activity or transaction or own any interest (fee, leasehold or otherwise) in any real property, or incur, assume, or suffer to exist any Indebtedness other than (a) the ownership of all outstanding Equity Interests in the Borrower, (b) maintaining its corporate existence, (c) participating in tax, accounting and other administrative activities as the parent of a consolidated group of companies, including the Borrower, (d) making Restricted Payments of amounts received by it pursuant to Section 7.06, and making Investments in the Borrower, (e) in respect of the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, (f) the execution and delivery of the Exchange Agreement and the performance of its obligations thereunder, (g) incurring Indebtedness consisting of an unsecured guarantee of the Indebtedness represented by the Convertible Senior Notes, (h) providing, and complying with its obligations in respect of, Permitted Guarantees, (i) (x) entering into Holdings Tax Equity Credit Support and (y) making Holdings Tax Equity Payments in an amount not to exceed, in the aggregate for all such Holdings Tax Equity Payments made by Holdings during the term of this Agreement, 10% of Holdings' shareholders' equity as reported in the most recent financial statements filed by Holdings with the SEC on Form 10-Q or Form 10-K, as applicable, (it being understood that Holdings may enter into Holdings Tax Equity Credit Support without regard to such 10% cap, but that actual payments made by Holdings with respect thereto are subject to such 10% cap) and (j) activities incidental to the businesses or activities described in clauses (a) through (i) of this Section.

7.18 Swap Contracts. Enter into any Swap Contract other than as permitted by Section 7.02(a).

7.19 Sales and Lease-Backs. Become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower or such Company Group Party has sold or transferred or is to sell or to transfer to any other Person.

7.20 Permitted Tax Equity Credit Support. Enter into any indemnification, guarantee or other credit support agreement in respect of any tax equity financing, or incur any obligations or make any payments thereunder or in connection therewith, other than pursuant to Permitted Guarantees (it being understood that Holdings may enter into Holdings Tax Equity Credit Support and make Holdings Tax Equity Payments pursuant to clause (i) of Section 7.17).

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of the Term Loan, or (ii) pay within five (5) Business Days after the same becomes due any interest on the Term Loan or any fee due hereunder, or (iii) pay within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.03(a), 6.05(a), 6.11, 6.12, or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 45 days after written notice by the Administrative Agent or any Lender to the Borrower; or

(d) Representations and Warranties. Any representation, warranty or certification made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default.

(i) Any Loan Party, Company Group Party or Material Project Company (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), after giving effect to any grace, waiver and any cure periods, in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) (x) in the case of any Loan Party or Company Group Party, having an aggregate principal amount then outstanding (excluding, for the avoidance of doubt, any undrawn commitments other than any undrawn commitments under the Revolving Credit Agreement or under any other Indebtedness secured by Liens on any or all of the Collateral on a pari passu basis with the Obligations) of more than the Threshold Amount, and (y) in the case of (1) any Project Company that, individually or together with any other Project Company that is in default under any of its Indebtedness or Guarantees or that is then the subject of an event described in Section 8.01(f) or (g), made Restricted Payments, directly or indirectly through Company Group Parties or otherwise, to the Borrower in an amount equal to or greater than 30% of the Distributed Cash during the most recently completed Measurement Period (any such Project Company, a “Material Project Company”) or (2) any Company Group Party that is not a Loan Party, the terms of which Indebtedness or Guarantee prohibit such Person from making Restricted Payments as a result thereof, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which event of default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its Stated Maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or

(ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party, Company Group Party or Material Project Company is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party, Company Group Party or Material Project Company is an Affected Party (as so defined) and, in either event, (x) in the case of any Loan Party, the Swap Termination Value (after giving effect to any netting arrangements) owed by such Loan Party as a result thereof is greater than the Threshold Amount and (y) in the case of any Company Group Party that is not a Loan Party or Material Project Company, the terms of such Swap Contract prohibit such Person from making Restricted Payments as a result thereof;

provided that no Event of Default shall result under this clause (e) from an event or circumstance limited to a Material Project Company unless, as result thereof and giving pro forma effect thereto, the Borrower would be in violation of Section 7.11 (such calculation to be done on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) (or, if no such information has yet been delivered, pursuant to clause (e) of Article IV in respect of the financial statements delivered pursuant thereto)); or

(f) Insolvency Proceedings, Etc. Holdings, the Borrower, any Material Company Group Party, any group of Company Group Parties that, taken together, would constitute a Material Company Group Party, or any Material Project Company institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; provided that no Event of Default shall result under this clause (f) from an event or circumstance limited to a Material Project Company unless, as result thereof and giving pro forma effect thereto, the Borrower would be in violation of Section 7.11 (such calculation to be done on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) (or, if no such information has yet been delivered, pursuant to clause (e) of Article IV in respect of the financial statements delivered pursuant thereto)); or

(g) Inability to Pay Debts; Attachment. (i) Holdings, the Borrower, any Material Company Group Party, any group of Company Group Parties that, taken together, would constitute a Material Company Group Party, or any Material Project Company becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 45 days after its issue or levy; provided that no Event of Default shall result under this clause (g) from an event or circumstance limited to a Material Project Company unless, as result thereof and giving pro forma effect thereto, the Borrower would be in violation of Section 7.11 (such calculation to be done on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) (or, if no such information has yet been delivered, pursuant to clause (e) of Article IV in respect of the financial statements delivered pursuant thereto)); or

(h) Judgments. There is entered against any Loan Party or Company Group Party (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance, which has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. If a Material Adverse Effect would result as a result thereof: (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder, or the satisfaction in full of all the Obligations (other than Contingent Obligations as to which no claim has been made), ceases to be in full force and effect; or any Loan Party or any Affiliate thereof that is the Equity Investor or a Subsidiary of the Equity Investor contests in any manner the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Article IV or Section 6.12 shall for any reason (other than pursuant to the terms hereof or thereof) cease to create a valid and perfected (subject to Section 4.7(b) of the Security Agreement in the case of IP Rights) first priority Lien (subject to Permitted Prior Liens) on any material portion of the Collateral purported to be covered thereby, in each case for any reason other than the Administrative Agent's failure to maintain possession of any equity certificates or other instruments delivered to it under the Collateral Documents; provided that, for purposes of this clause (l), all or any portion of the Pledged Equity shall be deemed to be a material portion of the Collateral.

Notwithstanding anything to the contrary contained in this Article VIII, in the event that the Borrower fails to comply with the requirements of Section 7.11, until the expiration of the tenth day subsequent to the date the certificate calculating such compliance is required to be delivered pursuant to Section 6.02(a) (the period from such failure to comply to such tenth day, the "Cure Period"), the Borrower shall have the right to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of the Borrower (collectively, the "Cure Right"), and upon the receipt by the Borrower of such cash (the "Cure Amount") pursuant to the exercise by the Borrower of such Cure Right compliance with the covenants set forth in Section 7.11 shall be recalculated giving effect to the following pro forma adjustments:

(a) Borrower Cash Flow shall be increased, solely for the purpose of measuring compliance with Section 7.11 and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; and

(b) if, after giving effect to the foregoing recalculations, the Borrower shall then be in compliance with the requirements of Section 7.11, the Borrower shall be deemed to have satisfied the requirements of Section 7.11 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 breach or default of Section 7.11 that had occurred shall be deemed cured for the purposes of this Agreement.

Notwithstanding anything herein to the contrary, (a) in each two-fiscal-quarter period there shall be at least one fiscal quarter in which the Cure Right is not exercised, (b) in each eight-fiscal-quarter period, there shall be a period of at least four consecutive fiscal quarters during which the Cure Right is not exercised, (c) the Cure Amount shall be no greater than the amount required for purposes of complying with Section 7.11 as of the relevant date of determination and (d) no more than five (5) Cure Rights may be exercised in the aggregate.

8.02 Remedies upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) [reserved];

(b) declare the unpaid principal amount of the outstanding Term Loan, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) [reserved]; and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or at law or in equity;

provided that upon the occurrence of an Event of Default set forth in Section 8.01(f) with respect to any Loan Party under the Bankruptcy Code, the unpaid principal amount of the outstanding Term Loan and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 or any other Loan Document (or after the Term Loan has automatically become immediately due and payable as set forth in the proviso to Section 8.02), subject to any Intercreditor Agreement then in effect, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Term Loan and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Term Loan and Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE IX ADMINISTRATIVE AGENT

9.01 Appointment and Authority. (a) Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers, rights and remedies as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions, powers, rights and remedies as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent," and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Person serving as the Administrative 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 the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any of its Subsidiaries or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (and it is understood and agreed that the use of the term “agent” (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and the transactions contemplated hereby;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents 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 expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability unless the Administrative Agent receives an indemnification satisfactory to it from the Lenders with respect to such action or that is contrary to any Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct;

(e) shall be deemed not to have knowledge of any Default unless and until notice describing such Default as such is given to the Administrative Agent by the Borrower or a Lender;

(f) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vii) the creation, perfection or priority of Liens on the Collateral; and

(g) shall not be required by any provision in this Agreement or any Loan Document to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account.

9.04 Reliance by Administrative Agent; Indemnification, Etc. The Administrative Agent shall not incur any liability (i) for any action taken or omitted to be taken by it in reliance upon any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person or (ii) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and nonappealable judgment). The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of the Term Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of the Term Loan. The Administrative 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.

Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 11.06, (ii) may rely on the Register to the extent set forth in Section 11.06(c), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of the Term Loan that by its terms must be fulfilled to the satisfaction of a Lender, may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender sufficiently in advance of the making of the Term Loan and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative 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 this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Section 11.04, as well as all exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document shall continue in effect for the benefit of such retiring Administrative 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 the retiring Administrative Agent was acting as Administrative Agent.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties 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 or any other Lender or any of their Related Parties 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, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, the Arranger shall have no powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of the Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loan and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.08 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.08 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding. The Administrative Agent (upon the instruction of the Required Lenders) is authorized to credit bid any Obligation held by any Lender on a pro rata basis in a proceeding under any Debtor Relief Law without the prior consent of such Lender.

9.10 Collateral Matters. Except with respect to the exercise of setoff rights in accordance with Section 11.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) irrevocably authorizes the Administrative Agent, at its option and in its discretion, to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Discharge of the Secured Obligations, (ii) that is sold or as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 11.01.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property as set forth herein or in the Collateral Documents. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Secured Cash Management Agreements and Secured Hedge Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, the Guaranty or any Collateral by virtue of the provisions hereof or of the Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

9.12 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 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) of one or more Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Term Loan, the Term Loan Commitment or this Agreement,

(ii) the 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 with respect to such Lender’s entrance into, participation in, administration of and performance of the Term Loan, the Term Loan Commitment and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Term Loan, the Term Loan Commitment and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loan, the Term Loan Commitment and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Term Loan, the Term Loan Commitment 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, 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 not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Term Loan, the Term Loan Commitment 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 hereto or thereto).

9.13 Erroneous Payments. With respect to any payment that the Administrative Agent makes for the account of the Lenders hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the “Rescindable Amount”): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment; then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Without limitation of the foregoing or of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender, whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender promptly upon determining that any payment made to such Lender comprised, in whole or in part, a Rescindable Amount.

ARTICLE X CONTINUING GUARANTY

10.01 Guarantee of Secured Obligations. Each of the Guarantors hereby, jointly and severally, absolutely, unconditionally and irrevocably, guarantees, as primary obligor and not merely as surety, to the Administrative Agent, for the benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by each other Guarantor and the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations. Each Guarantor shall be liable under its guarantee set forth in this Section 10.01, without any limitation as to amount, for all present and future Secured Obligations, including specifically all future increases in the outstanding amount of the Term Loan or other Secured Obligations and other future increases in the Secured Obligations, whether or not any such increase is committed, contemplated or provided for by the Loan Documents, the Secured Cash Management Agreements or the Secured Hedge Agreements on the Closing Date. Without limiting the generality of the foregoing, each Guarantor’s liability shall extend to all Secured Obligations (including, without limitation, interest, fees, costs and expenses) that would be owed by any other obligor on the Secured Obligations but for the fact that they are unenforceable or not allowable due to the existence of a proceeding under any Debtor Relief Law involving such other obligor because it is the intention of the Guarantors and the Secured Parties that the Secured Obligations which are guaranteed by the Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower or any Guarantor of any portion of such Secured Obligations.

10.02 Limitation on Obligations Guaranteed.

(a) Notwithstanding any other provision hereof, the right of recovery against each Guarantor under this Article X shall not exceed \$1.00 less than the lowest amount which would render such Guarantor's obligations under this Article X void or voidable under applicable law, including, without limitation, the Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to the guaranty set forth herein and the obligations of each Guarantor hereunder. To effectuate the foregoing, the Administrative Agent and the Guarantors hereby irrevocably agree that the Secured Obligations of each Guarantor in respect of the guarantee set forth in this Article X at any time shall be limited to the maximum amount as will result in the Secured Obligations of such Guarantor with respect thereto hereof not constituting a fraudulent transfer or conveyance after giving full effect to the liability under such guarantee set forth in this Article X and its related contribution rights but before taking into account any liabilities under any other guarantee by such Guarantor. For purposes of the foregoing, all guarantees of such Guarantor other than the guarantee under this Article X will be deemed to be enforceable and payable after the guaranty under this Article X. To the fullest extent permitted by applicable law, this Section 10.02(a) shall be for the benefit solely of creditors and representatives of creditors of each Guarantor and not for the benefit of such Guarantor or the holders of any Equity Interest in such Guarantor.

(b) Each Guarantor agrees that Secured Obligations may at any time and from time to time be incurred or permitted in an amount exceeding the maximum liability of such Guarantor under Section 10.02(a) without impairing the guarantee contained in this Article X or affecting the rights and remedies of any Secured Party hereunder.

10.03 Nature of Guarantee; Continuing Guarantee; Waivers of Defenses Etc.

(a) Each Guarantor understands and agrees that the guarantee contained in this Article X shall be construed as a continuing guarantee of payment and performance and not merely of collectability. Each Guarantor waives diligence, presentment, protest, marshaling, demand for payment, notice of dishonor, notice of default and notice of nonpayment to or upon the Borrower or any of the other Guarantors with respect to the Secured Obligations. Without limiting the generality of the foregoing, this Guaranty and the obligations of each Guarantor hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, set-off, defense, counterclaim, discharge or termination for any reason (other than a Discharge of the Secured Obligations).

(b) Each Guarantor agrees that the Secured Obligations of each Guarantor hereunder are independent of the Secured Obligations of each other Guarantor and of any other guarantee of the Secured Obligations and when making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or other guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings.

(c) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by any Secured Party from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment, remain liable for the Secured Obligations until the Discharge of the Secured Obligations.

(d) Without limiting the generality of the foregoing, each Guarantor agrees that its obligations under and in respect of the guarantee contained in this Article X and any security interest securing the Secured Obligations shall not be affected by, and shall remain in full force and effect without regard to, and hereby waives all rights, claims or defenses that it might otherwise have (now or in the future) with respect to each of the following (whether or not such Guarantor has knowledge thereof):

(i) the validity or enforceability of this Agreement or any other Loan Document or any Secured Hedge Agreement or Secured Cash Management Agreement, any of the Secured Obligations or any guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party;

(ii) any renewal, extension or acceleration of, or any increase in the amount of the Secured Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Loan Documents or any Secured Hedge Agreement or Secured Cash Management Agreement;

(iii) any failure or omission to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under any Loan Document, any Secured Hedge Agreement or any Secured Cash Management Agreement, at law, in equity or otherwise) with respect to the Secured Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Secured Obligations;

(iv) any change, reorganization or termination of the corporate structure or existence of the Borrower or any Guarantor or any of their Subsidiaries and any corresponding restructuring of the Secured Obligations;

(v) any settlement, compromise, release, or discharge of, or acceptance or refusal of any offer of payment or performance with respect to, or any substitution for, the Secured Obligations, or any subordination of the Secured Obligations to any other obligations;

(vi) the validity, perfection, non-perfection or lapse in perfection, priority or avoidance of any security interest or lien, the release of any or all collateral securing, or purporting to secure, the Secured Obligations or any other impairment of such collateral;

(vii) any exercise of remedies with respect to any security for the Secured Obligations (including, without limitation, any collateral, including the Collateral, securing or purporting to secure any of the Secured Obligations) at such time and in such order and in such manner as the Administrative Agent and the Secured Parties may decide and whether or not every aspect thereof is commercially reasonable and whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that any Guarantor would otherwise have, and without limiting the generality of the foregoing or any other provisions hereof, each Guarantor hereby expressly waives any and all benefits which might otherwise be available to such Guarantor under applicable law; and

(viii) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Secured Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower or any Guarantor for the Secured Obligations, or of such Guarantor under the guarantee contained in this Article X or of any security interest granted by any Guarantor, whether in a proceeding under any Debtor Relief Law or in any other instance.

(e) In addition each Guarantor further waives any and all other defenses, set-offs or counterclaims (other than a defense of payment or performance in full hereunder) which may at any time be available to or be asserted by it, the Borrower, or any other Guarantor or Person against any Secured Party, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations, accord and satisfaction and usury, other than payment in full in cash of all Secured Obligations and a termination of all Term Loan Commitments.

10.04 Rights of Reimbursement, Contribution and Subrogation.

In case any payment is made on account of the Secured Obligations by any Guarantor or is received or collected on account of the Secured Obligations from any Guarantor or its property:

(a) If such payment is made by a Guarantor or the Borrower or from its property in respect of the Secured Obligations of another Guarantor, such Guarantor shall be entitled, subject to and upon (but not before) the Discharge of the Secured Obligations, (A) to demand and enforce reimbursement for the full amount of such payment from such other Guarantor and (B) to demand and enforce contribution in respect of such payment from each other Guarantor which has not paid its fair share of such payment, as necessary to ensure that (after giving effect to any enforcement of reimbursement rights provided hereby) each Guarantor pays its fair share of the unreimbursed portion of such payment. For this purpose, the fair share of each Guarantor as to any unreimbursed payment shall be determined based on an equitable apportionment of such unreimbursed payment among all Guarantors (other than the Guarantor whose primary obligations were so guaranteed by the other Guarantors) based on the relative value of their assets and any other equitable considerations deemed appropriate by the court. For purposes of the foregoing, all guarantees of such Guarantor other than the guarantee under Article X hereof will be deemed to be enforceable and payable after the guaranty under Article X hereof.

(b) Any right of subrogation of any Guarantor or the Borrower shall be enforceable solely after the Discharge of the Secured Obligations and solely against the Guarantors or the Borrower, and not against the Secured Parties, and neither the Administrative Agent nor any other Secured Party shall have any duty whatsoever to warrant, ensure or protect any such right of subrogation or to obtain, perfect, maintain, hold, enforce or retain any collateral securing or purporting to secure any of the Secured Obligations for any purpose related to any such right of subrogation. If subrogation is demanded by any Guarantor, then, after the Discharge of the Secured Obligations, the Administrative Agent shall deliver to the Guarantors making such demand, or to a representative of such Guarantors or of the Guarantors generally, an instrument satisfactory to the Administrative Agent transferring, on a quitclaim basis without any recourse, representation, warranty or any other obligation whatsoever, whatever security interest the Administrative Agent then may hold in whatever collateral securing or purporting to secure any of the Secured Obligations that may then exist that was not previously released or disposed of or acquired by the Administrative Agent.

(c) All rights and claims arising under this Section 10.04 or based upon or relating to any other right of reimbursement, indemnification, contribution or subrogation that may at any time arise or exist in favor of any Guarantor or the Borrower as to any payment on account of either (x) the Secured Obligations or (y) any other obligation that is secured by any collateral that also secures or purports to secure any of the Secured Obligations, in each case made by it or received or collected from its property, shall be fully subordinated to the Secured Obligations in all respects prior to the Discharge of the Secured Obligations. Until the Discharge of the Secured Obligations, no Guarantor may demand or receive any collateral security, payment or distribution whatsoever (whether in cash, property or securities or otherwise) on account of any such right or claim. If any such payment or distribution is made or becomes available to any Guarantor in any bankruptcy case, receivership, or insolvency or liquidation proceeding, such payment or distribution shall be delivered by the person making such payment or distribution directly to the Administrative Agent, for application to the payment of the Secured Obligations. If any such payment or distribution is received by any Guarantor, it shall be held by such Guarantor in trust, as trustee of an express trust for the benefit of the Secured Parties, and shall forthwith be transferred and delivered by such Guarantor to the Administrative Agent, in the exact form received and, if necessary, duly endorsed.

(d) The obligations of the Guarantors under this Agreement and the other Loan Documents, including their liability for the Secured Obligations and the enforceability of the security interests granted thereby, are not contingent upon the validity, legality, enforceability, collectability or sufficiency of any right of reimbursement, contribution or subrogation arising under this Section 10.04 or otherwise. The invalidity, insufficiency, unenforceability or uncollectability of any such right shall not in any respect diminish, affect or impair any such obligation or any other claim, interest, right or remedy at any time held by any Secured Party against any Guarantor or its property. The Secured Parties make no representations or warranties in respect of any such right and shall have no duty to assure, protect, enforce or ensure any such right or otherwise relating to any such right.

10.05 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to the Administrative Agent without set-off or counterclaim in Dollars in immediately available funds at the Administrative Agent's Office.

10.06 Subordination of Other Obligations. Any Indebtedness of the Borrower or any Guarantor now or hereafter held by any other Guarantor (the "Obligee Guarantor"), whether as original creditor, assignee, or by way of subrogation, restitution or otherwise, is hereby subordinated in right of payment to the Secured Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for the Administrative Agent on behalf of the Secured Parties and shall forthwith be paid over to the Administrative Agent for the benefit of the Secured Parties to be credited and applied against the Secured Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

10.07 Financial Condition of Borrower and Guarantors. Any Credit Extension may be made to the Borrower or continued from time to time and any Secured Hedge Agreements and Secured Cash Management Agreements may be entered into from time to time, in each case, without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower or any Guarantor at the time of any such grant or continuation or at the time such Secured Hedge Agreement or Secured Cash Management Agreement is entered into, as the case may be. No Secured Party shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower or any other Guarantor. Each Guarantor has adequate means to obtain information from the Borrower and each Guarantor on a continuing basis concerning the financial condition of the Borrower and each other Guarantor and its ability to perform its obligations under the Loan Documents, Secured Cash Management Agreements and Secured Hedge Agreements, and each Guarantor assumes responsibility for being and keeping informed of the financial condition of the Borrower and each other Guarantor and of all circumstances bearing upon the risk of nonpayment of the Secured Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Secured Party to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower or any other Guarantor now known or hereafter known by any Secured Party.

10.08 Bankruptcy, Etc. The obligations of the Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding under any Debtor Relief Law, voluntary or involuntary, involving the Borrower or any Guarantor or by any defense which the Borrower or any Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. To the fullest extent permitted by law, the Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay the Administrative Agent, or allow the claim of the Administrative Agent in respect of, any interest, fees, costs, expenses or other Secured Obligations accruing or arising after the date on which such case or proceeding is commenced.

10.09 Duration of Guaranty. The guaranty contained in this Article X shall remain in full force and effect until the Discharge of the Secured Obligations.

10.10 Reinstatement. If at any time payment of any of the Secured Obligations or any portion thereof is rescinded, disgorged or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, or if any Secured Party repays, restores, or returns, in whole or in part, any payment or property previously paid or transferred to the Secured Party in full or partial satisfaction of any Secured Obligation, because the payment or transfer or the incurrence of the obligation is so satisfied, or is declared to be void, voidable, or otherwise recoverable under any state or federal law (collectively a “Voidable Transfer”), or because such Secured Party elects to do so on the reasonable advice of its counsel in connection with an assertion that the payment, transfer or incurrence is a Voidable Transfer, then, as to any such Voidable Transfer and as to all reasonable costs, expenses and attorney’s fees of the Secured Party related thereto, the liability of each Guarantor hereunder will automatically and immediately be revived, reinstated, and restored and will exist as though the Voidable Transfer had never been made.

10.11 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided that each Qualified ECP Guarantor shall only be liable under this Section 10.11 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.11, or otherwise under this Guaranty, as it relates to such Loan Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until a Discharge of the Secured Obligations. Each Qualified ECP Guarantor intends that this Section 10.11 constitute, and this Section 10.11 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE XI
MISCELLANEOUS

11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

- Extension;
- (a) waive any condition set forth in Article IV, without the written consent of each Lender party hereto at the time of the Credit Extension;
 - (b) extend, increase or reinstate the Term Loan Commitment of any Lender without the consent of such Lender;
 - (c) [reserved];
 - (d) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments or payments of increased costs or indemnities) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender directly entitled to such payment;
 - (e) reduce the principal of, or the rate of interest specified herein on, the Term Loan, or (subject to clause (ii) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly entitled to such amount; provided that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or any other Obligations at the Default Rate;
 - (f) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;
 - (g) change any provision of this Section 11.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, or the last sentence of Section 9.09 or clause (x) of the first sentence of Section 11.06(a) without the written consent of each Lender;
 - (h) release all or substantially all of the Collateral in any transaction or series of related transactions without the written consent of each Lender; or

- (i) release all or substantially all of the value of the Guaranty without the written consent of each Lender;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and each such Defaulting Lender shall be deemed to have approved or disapproved of any such amendment, waiver or consent hereunder in the same proportion as the non-Defaulting Lenders), except that (a) the Term Loan Commitment of such Lender may not be increased, extended or reinstated without the consent of such Lender, (b) no amendment, waiver or consent hereunder shall reduce the principal of, or the rate of interest specified herein on, the Term Loan payable hereunder or under any other Loan Document without the written consent of such Lender directly entitled to such amount and (c) no amendment, waiver or consent hereunder shall postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments or payments of increased costs or indemnities) of principal or interest due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of such Lender directly entitled to such payment.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender or each directly and adversely affected Lender, or of each Lender directly entitled to a payment amount, or each affected Lender, and that has been approved by the Required Lenders, the Borrower may replace such non-consenting Lender in accordance with Section 11.13; provided that in the case of any non-consenting Lender such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

Notwithstanding anything to the contrary in this Agreement or any other Loan Document (including this Section 11.01), subject to Section 3.03, only the consent of the Administrative Agent and the Borrower shall be required to amend this Agreement to reflect an alternate rate of interest as to which the Required Lenders shall not have objected in accordance with Section 3.03.

11.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to any Loan Party, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law or in equity in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) [reserved], (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.12), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.12, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Arranger, the Administrative Agent and their respective Affiliates (including the reasonable and documented or invoiced fees and expenses of one counsel per relevant jurisdiction for the Arranger and the Administrative Agent and one local counsel per relevant jurisdiction (which may include a single counsel acting in multiple jurisdictions) and one special counsel, including special regulatory counsel, per relevant jurisdiction), in connection with the Transactions and the contemplated use of proceeds thereof and the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents and any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions or the other transactions contemplated hereby or thereby shall be consummated) and any ancillary documents in connection therewith, (ii) [reserved] and (iii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees and expenses of any counsel for the Administrative Agent or any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents and the Transactions, including its rights under this Section and (B) in connection with the Term Loan, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Term Loan. The Borrower acknowledges that the Administrative Agent or the Arranger may receive a benefit, including without limitation, a discount, credit or other accommodation, from counsel based on the fees such counsel may receive on account of their relationship with the Administrative Agent or the Arranger.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Arranger, the Administrative Agent (and any sub-agent thereof) and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, joint or several, (including the fees and expenses of one counsel and local and special counsel for the Indemnitees (except to the extent that an Indemnitee shall have been advised by counsel that there are actual conflicting interests or there exists the reasonable likelihood of a conflicting interest between such Indemnitee and another Indemnitee)) (in each case, other than with respect to those losses, claims, damages, liabilities and related expenses set forth in Sections 3.02, 3.04, and 3.05, which shall be governed by the relevant terms and conditions set forth therein) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder and the consummation of the Transactions and the other transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) the Term Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by Holdings or any of its Subsidiaries, or any Environmental Liability related in any way to Holdings or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation, defense or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any Affiliate thereof or any of the Borrower’s or such Loan Party’s or such Affiliate’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses, (w) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (x) result from a claim brought by one Indemnitee against another Indemnitee (other than claims against any Agent or Arranger in its capacity as such) and not arising out of or involving any act or omission of any Loan Party or any of their subsidiaries or Affiliates or (y) result from a claim brought by the Borrower or any other Loan Party against such Indemnitee for material breach of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender’s Applicable Percentage 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 (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no Loan Party shall assert, and each Loan Party hereby waives any claim against the Arranger, the Administrative Agent, the Lenders and their respective affiliates and their and their respective affiliates' officers, directors, employees, advisors, and agents (each, and including, without limitation, Bank of America, an "Agent-Related Person"), 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, any other Loan Document or any agreement or instrument contemplated hereby, the Transactions or the other transactions contemplated hereby or thereby, the Term Loan or the use of the proceeds thereof. No Agent-Related Person shall be liable for any damages (whether direct or indirect, in contract or tort or otherwise) arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Agent-Related Person 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 other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Agent-Related Person as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (x) neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and (y) no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Agent-Related Persons, the Indemnitees and the Related Parties of each Agent-Related Person, the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Loan Commitment and the Term Loan at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Term Loan Commitment and the Term Loan at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of any Term Loan Commitment (which for this purpose includes the Term Loan outstanding thereunder) or, if such Term Loan Commitment is not then in effect, the principal outstanding balance of the Term 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 or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loan and Term Loan Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that 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

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Loan Party or any Loan Party's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate, to pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon). Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement 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 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 of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Term Loan Commitment of, and principal amounts (and stated interest) of the Term Loan 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 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 and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Loan Party or the Administrative Agent sell participations to any Person (other than a natural person or a Loan Party or any Loan Party's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Term Loan Commitment and/or the Term Loan owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04, and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b); provided that such Participant agrees to be subject to Section 3.01 as if it were a Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.12 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loan or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (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 (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal 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 action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their respective obligations, (g) with the consent of the Borrower, (h) to market data collectors, similar services providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; provided that, in the case of information received from a Loan Party or any such Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 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 to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Term Loan or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of an original executed counterpart of this Agreement.

11.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of the Credit Extension, and shall continue in full force and effect as long as the Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or if any Lender is a Defaulting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);

(b) such assigning Lender shall have received payment of an amount equal to the outstanding principal of its Term Loan, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each Lender agrees that if the Borrower exercises its option hereunder to cause an assignment by such Lender, 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 11.06. 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, such Lender shall be deemed to have executed and delivered such documentation as may be required to give effect to an assignment in accordance with Section 11.06.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT; PROVIDED THAT IF NONE OF SUCH COURTS CAN AND WILL EXERCISE JURISDICTION, THEN SUCH EXCLUSIVITY SHALL NOT APPLY; PROVIDED, FURTHER, THAT SUIT FOR THE RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT OBTAINED IN ANY SUCH NEW YORK STATE OR FEDERAL COURT MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION. 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 OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT 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 ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS IN ANY COURT REFERRED TO IN SECTION 11.14(B). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, CLAIM, COUNTERCLAIM OR LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arranger and the Lenders are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger and the Lenders, on the other hand, that do not directly or indirectly give rise to, nor does any Loan Party rely on, any fiduciary duty on the part of any of the Administrative Agent, the Arranger or the Lenders, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and none of the Administrative Agent, the Arranger or the Lenders is advising the Loan Parties as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction and (C) each of the Loan Parties is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the Transactions and the other transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arranger and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, the Arranger nor the Lenders has any obligation to the Loan Parties or any of their respective Affiliates with respect to the Transactions or the other transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arranger nor the Lenders nor their respective Affiliates has any obligation to disclose any of such interests and transactions to, or furnish confidential information obtained by them from other companies to, the Loan Parties or any of their respective Affiliates. To the fullest extent permitted by law, each of the Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Arranger or the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby, and agrees that none of the Administrative Agent, the Arranger or the Lenders shall have any liability (whether direct or indirect) to the Loan Parties in respect of such a fiduciary duty claim or to any Person asserting a fiduciary duty claim on behalf of or in right of the Loan Parties, including the stockholders, employees or creditors thereof.

11.17 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to this Agreement or any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.18 USA PATRIOT Act. Each Lender that is subject to the Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “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 the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” an anti-money laundering rules and regulations, including the Act. This notice is given in accordance with the requirements of the Act and is effective for each Lender.

11.19 ENTIRE AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

11.20 INTERCREDITOR AGREEMENTS. PURSUANT TO THE EXPRESS TERMS OF EACH INTERCREDITOR AGREEMENT, IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THE RELEVANT INTERCREDITOR AGREEMENT AND ANY OF THE LOAN DOCUMENTS, THE PROVISIONS OF THE RELEVANT INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL (EXCEPT IN THE CASE OF A CONFLICT WITH ANY PROVISION OF SUCH INTERCREDITOR AGREEMENT REFERENCING THE RIGHTS, DUTIES, PRIVILEGES, IMMUNITIES AND INDEMNITIES OF THE ADMINISTRATIVE AGENT, THE PROVISIONS OF ARTICLE IX OF THIS AGREEMENT WILL CONTROL).

11.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

11.22 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for a Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.22, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

BORROWER:

CLEARWAY ENERGY OPERATING LLC

By: /s/ Chad Plotkin

Name: Chad Plotkin

Title: Senior Vice President, Chief Financial Officer & Treasurer

GUARANTORS:

CLEARWAY ENERGY LLC

DGPV HOLDING LLC

By: /s/ Chad Plotkin

Name: Chad Plotkin

Title: Senior Vice President, Chief Financial Officer & Treasurer

[Signature Page to Credit Agreement]

ALTA WIND 1-5 HOLDING COMPANY, LLC
ALTA WIND COMPANY, LLC
CBAD HOLDINGS II, LLC
CENTRAL CA FUEL CELL 1, LLC
CLEARWAY SOLAR STAR LLC
CWEN PINNACLE REPOWERING HOLDINGS LLC
CWSP RATTLESNAKE HOLDING LLC
DAGGETT SOLAR HOLDCO LLC
DG-CS HOLDINGS LLC
DG SREC HOLDCO LLC
ECP UPTOWN CAMPUS HOLDINGS LLC
ENERGY CENTER CAGUAS HOLDINGS LLC
ENERGY CENTER FAJARDO HOLDINGS LLC
ENERGY CENTER HONOLULU HOLDINGS LLC
FUEL CELL HOLDINGS LLC
LANGFORD HOLDING LLC
LIGHTHOUSE RENEWABLE HOLDINGS LLC
MARSH LANDING HOLDCO LLC
NIMH SOLAR HOLDINGS LLC
OCOTILLO WINDPOWER HOLDINGS LLC
PORTFOLIO SOLAR I, LLC
ROSAMOND SOLAR HOLDCO LLC
RPV HOLDING LLC
SOLAR FLAGSTAFF ONE LLC
SOLAR IGUANA LLC
SOLAR LAS VEGAS MB 1 LLC
SOLAR TABERNACLE LLC
SOUTH TRENT HOLDINGS LLC
SPP ASSET HOLDINGS, LLC
SPP FUND II HOLDINGS, LLC
SPP FUND II, LLC
SPP FUND II-B, LLC
SPP FUND III, LLC
THERMAL CANADA INFRASTRUCTURE HOLDINGS LLC
THERMAL HAWAII DEVELOPMENT HOLDINGS LLC
THERMAL INFRASTRUCTURE DEVELOPMENT HOLDINGS LLC
UB FUEL CELL, LLC
UTAH SOLAR MASTER HOLDCO LLC
WV WIND HOLDINGS LLC

By: /s/ Chad Plotkin

Name: Chad Plotkin

Title: Vice President & Treasurer

[Signature Page to Credit Agreement]

BANK OF AMERICA, N.A.,
as Administrative Agent and Lender

By: /s/ Holli Balzer
Name: Holli Balzer
Title: Vice President

[Signature Page to Credit Agreement]
