

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

**FORM S-3  
REGISTRATION STATEMENT**  
*Under*  
**THE SECURITIES ACT OF 1933**

**MATADOR RESOURCES COMPANY**

(Exact name of registrant as specified in its charter)

Texas  
(State or other jurisdiction  
of incorporation or organization)

One Lincoln Centre  
5400 LBJ Freeway, Suite 1500  
Dallas, Texas 75240  
(972) 371-5200

(Address, including zip code, and telephone number,  
including area code, of registrant's principal  
executive offices)

27-4662601  
(I.R.S. Employer  
Identification No.)

Joseph Wm. Foran  
Chairman, President and Chief Executive Officer  
Matador Resources Company  
5400 LBJ Freeway, Suite 1500  
Dallas, Texas 75240  
(972) 371-5200

(Name, address, including zip code, and telephone  
number, including area code, of agent for service)

Copies to:  
Janice V. Sharry  
W. Bruce Newsome  
Haynes and Boone, LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219  
(214) 651-5000

**Approximate date of commencement of proposed sale to the public:**  
From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered <sup>(1)</sup>	Proposed Maximum Aggregate Offering Price <sup>(2)(3)</sup>	Amount of Registration Fee <sup>(2)</sup>
Senior Debt Securities	—	—
Subordinated Debt Securities	—	—
Common Stock	—	—
Preferred Stock	—	—
Warrants	—	—
Guarantees of Debt Securities <sup>(4)</sup>	—	—
<b>Total</b>	<b>\$300,000,000</b>	<b>\$40,920</b>

- (1) Any securities registered hereunder may be sold separately or as units with other securities registered hereunder.
- (2) Estimated solely for the purpose of computing the registration fee pursuant to Rule 457(o) under the Securities Act of 1933 and exclusive of accrued interest, distributions and dividends, if any. In no event will the aggregate initial offering price of all securities issued from time to time pursuant to this Registration Statement exceed \$300,000,000. If any debt securities are issued at an original issue discount, then the offering price shall be in such greater principal amount as shall result in an aggregate initial offering price of up to \$300,000,000, less the dollar amount of any securities previously issued hereunder.
- (3) There is being registered hereunder such indeterminate number or amount of senior and subordinated debt securities, shares of common stock, shares of preferred stock and warrants as may from time to time be issued at indeterminate prices and as may be issuable upon conversion, redemption, exchange, exercise or settlement of any securities registered hereunder, including under any applicable antidilution provisions.
- (4) Guarantees of the payment of principal and interest on the debt securities may be provided by subsidiaries of the registrant. No additional consideration will be received for the guarantees, and pursuant to Rule 457(n), no additional fee is required.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

**TABLE OF CO-REGISTRANTS**

Each of the following subsidiaries, and each other subsidiary of Matador Resources Company, that becomes a guarantor of certain of the securities registered hereby, is hereby deemed to be a registrant:

<b>Exact Name as Specified in Charter</b>	<b>Jurisdiction of Organization</b>	<b>IRS Employer Identification Number</b>
Longwood Gathering and Disposal Systems, LP	Texas	20-5668690
Longwood Gathering and Disposal Systems GP, Inc.	Texas	20-5668672
Matador Production Company	Texas	75-3131373
MRC Energy Company	Texas	36-4535752
MRC Permian Company	Texas	20-4090232
MRC Rockies Company	Texas	26-4001290

The address, including zip code, of each co-registrant is 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240, and the telephone number, including area code, is (972) 371-5200. The name and address, including zip code, of the agent for service of process for each of the co-registrants is the same as for Matador Resources Company.

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**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities, in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED APRIL 9, 2013**

**PRELIMINARY PROSPECTUS**



**\$300,000,000**

**SENIOR DEBT SECURITIES  
SUBORDINATED DEBT SECURITIES  
COMMON STOCK  
PREFERRED STOCK  
WARRANTS  
GUARANTEES OF DEBT SECURITIES**

We may offer and sell the securities listed above from time to time in one or more offerings in one or more classes or series. Any debt securities we issue under this prospectus may be guaranteed by one or more of our subsidiaries.

The aggregate initial offering price of the securities that we will offer will not exceed \$300,000,000. We will offer the securities in amounts, at prices and on terms to be determined by market conditions at the time of the offerings. The securities may be offered separately or together in any combination or as a separate series.

This prospectus provides you with a general description of the securities that may be offered. Each time securities are offered, we will provide a prospectus supplement and attach it to this prospectus. The prospectus supplement will contain more specific information about the offering and the terms of the securities being offered, including any guarantees by our subsidiaries. The supplements may also add, update or change information contained in this prospectus. This prospectus may not be used to offer or sell securities without a prospectus supplement describing the method and terms of the offering.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

Our common stock is traded on the New York Stock Exchange under the symbol "MTDR." The closing sales price for our common stock on April 5, 2013 was \$8.49 per share.

***You should carefully consider each of the risk factors described under "Risk Factors" beginning on page 3 of this prospectus.***

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined whether this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2013.

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The Registration Statement containing this prospectus, including the exhibits to the Registration Statement, provides additional information about us and the securities offered under this prospectus. The Registration Statement, including the exhibits and the documents incorporated herein by reference, can be read on the SEC website or at the SEC offices mentioned under the heading “Where You Can Find More Information.”

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the U.S. Securities and Exchange Commission, or SEC, using a “shelf” registration process. Using this process, we may offer any combination of the securities described in this prospectus in one or more offerings with a total initial offering price of up to \$300,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we use this prospectus to offer securities, we will provide a prospectus supplement and, if applicable, a pricing supplement that will describe the specific terms of the offering. The prospectus supplement and any pricing supplement may also add to, update or change the information contained in this prospectus. You should read this prospectus, the prospectus supplement and any pricing supplement, including the “Risk Factors” section, in addition to the information contained in the documents we refer to under the heading “Where You Can Find More Information.”

**You should rely only on the information contained or incorporated by reference in this prospectus, the prospectus supplement and any pricing supplement. We have not authorized any person, including any salesman or broker, to provide information other than that provided in this prospectus, the prospectus supplement or any pricing supplement. We have not authorized anyone to provide you with different information. We are not making an offer of the securities in any jurisdiction where the offer is not permitted. You should assume that the information in this prospectus, the prospectus supplement and any pricing supplement is accurate only as of the date on its cover page and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference.**

## ABOUT MATADOR RESOURCES COMPANY

### Introduction

Matador Resources Company (together with its direct and indirect subsidiaries, “Matador,” “we,” “us,” or the “Company”) is an independent energy company engaged in the exploration, development, production and acquisition of oil and natural gas resources in the United States, with a particular emphasis on oil and natural gas shale plays and other unconventional resource plays. Our current operations are focused primarily on the oil and liquids rich portion of the Eagle Ford shale play in South Texas and in the Haynesville shale play in Northwest Louisiana. In 2012, more than 90% of our total capital expenditures of \$334.6 million were directed to our operations in South Texas, primarily in the Eagle Ford shale, as we sought to transition to a more balanced commodity portfolio through the drilling of wells that were prospective for oil and liquids. For the year ended December 31, 2012, approximately 37% of our total production by volume (using a conversion ratio of one Bbl of oil per six Mcf of natural gas) and 79% of our total oil and natural gas revenues were attributable to oil production, primarily from the Eagle Ford shale. In 2013, we expect that approximately 82% of our estimated capital expenditures of \$310.0 million will be directed to increasing our oil production and oil reserves in South Texas, primarily in the Eagle Ford shale play. Although we did not drill any operated Haynesville shale natural gas wells during 2012, we directed approximately 3% of our capital expenditures to the Haynesville shale in 2012 to participate in several non-operated wells. In addition to these primary operating areas, we have a growing acreage position in Southeast New Mexico and West Texas where we plan to drill three exploratory wells to test the Wolfcamp and Bone Spring plays during 2013. We also have a large exploratory leasehold position in Southwest Wyoming and adjacent areas in Utah and Idaho where we are testing the Meade Peak shale.

We are a Texas corporation founded in July 2003 by Joseph Wm. Foran, our Chairman, President and CEO. Mr. Foran began his career as an oil and natural gas independent in 1983 when he founded Foran Oil Company with \$270,000 in contributed capital from 17 friends and family members. Foran Oil Company was later contributed to Matador Petroleum Corporation upon its formation by Mr. Foran in 1988. Mr. Foran served as Chairman and Chief Executive Officer of that company from its inception until it was sold in June 2003 to Tom Brown, Inc., in an all cash transaction for an enterprise value of approximately \$388.5 million. On February 7, 2012, we completed our initial public offering of 14,883,334 shares of common stock at \$12.00 per share, including shares sold pursuant to the partial exercise of the underwriters’ over-allotment option on March 7, 2012.

Our executive offices are located at 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240, and our telephone number is (972) 371-5200.

## **RISK FACTORS**

An investment in our securities involves a high degree of risk. You should carefully consider the risk factors and all of the other information included in, or incorporated by reference into, this prospectus, including those included in our most recent Annual Report on Form 10-K and in our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, in evaluating an investment in our securities. If any of these risks were to occur, our business, financial condition, results of operations and cash flows could be adversely affected. In that case, the trading price of our common stock, preferred stock, warrants or debt securities could decline and you could lose all or part of your investment. When we offer and sell any securities pursuant to a prospectus supplement, we may include additional risk factors relevant to such securities in the prospectus supplement.

## WHERE YOU CAN FIND MORE INFORMATION

Matador Resources Company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and in accordance therewith files reports, proxy or information statements and other information with the SEC. Such reports, proxy statements and other information can be inspected and copied at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. The phone number is 1-800-732-0330. In addition, the SEC maintains a web site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the SEC's web site is <http://www.sec.gov>.

Matador Resources Company has filed with the SEC a registration statement on Form S-3 under the Securities Act of 1933, as amended, or the Securities Act, with respect to the securities being offered hereby. As permitted by the rules and regulations of the SEC, this prospectus does not contain all the information set forth in the registration statement and the exhibits and schedules thereto. For further information with respect to Matador Resources Company and the securities offered hereby, reference is made to the registration statement, and such exhibits and schedules. A copy of the registration statement, and the exhibits and schedules thereto, may be inspected without charge at the public reference facilities maintained by the SEC at the addresses set forth above, and copies of all or any part of the registration statement may be obtained from such offices upon payment of the fees prescribed by the SEC. In addition, the registration statement may be accessed at the SEC's web site. Statements contained in this prospectus as to the contents of any contract or other document are not necessarily complete and, in each instance, reference is made to the copy of such contract or document filed as an exhibit to the registration statement, each such statement being qualified in all respects by such reference.

In addition, our filings are available on our website at <http://www.matadorresources.com>. Information on our website or any other website is not incorporated by reference in this prospectus and is not a part of this prospectus.

The SEC allows us to "incorporate by reference" the information we have filed with it, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings (excluding information furnished pursuant to Items 2.02 and 7.01 of Form 8-K) we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this prospectus and prior to the termination of the offering:

- Our Annual Report on Form 10-K for the year ended December 31, 2012, as filed with the SEC on March 18, 2013;
- Our Current Report on Form 8-K filed with the SEC on March 14, 2013 (only with respect to Items 1.01 and 2.03); and
- Description of our share capital contained in our Form 8-A filed with the SEC on January 27, 2012.

All filings filed by us pursuant to the Exchange Act after the date of the initial registration statement and prior to the effectiveness of the registration statement (excluding information furnished pursuant to Items 2.02 and 7.01 of Form 8-K) shall also be deemed to be incorporated by reference into the prospectus.

Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for all purposes to the extent that a statement contained in this prospectus or in any other subsequently filed document which is also incorporated or deemed to be incorporated by reference, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. You may request a copy of these filings (other than an



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exhibit to a filing unless that exhibit is specifically incorporated by reference into that filing) at no cost by writing or telephoning us at the following address and telephone number:

Matador Resources Company  
Attention: Corporate Secretary  
One Lincoln Centre  
5400 LBJ Freeway, Suite 1500  
Dallas, Texas 75240  
(972) 371-5200

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements in this prospectus constitute “forward-looking statements” within the meaning of applicable U.S. securities legislation. Additionally, forward-looking statements may be made orally or in press releases, conferences, reports, on our website or otherwise, in the future, by us or on our behalf. Such statements are generally identifiable by the terminology used such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “potential,” “predict,” “project,” “should” or other similar words.

By their very nature, forward-looking statements require us to make assumptions that may not materialize or that may not be accurate. Forward-looking statements are subject to known and unknown risks and uncertainties and other factors that may cause actual results, levels of activity and achievements to differ materially from those expressed or implied by such statements. Such factors include, among others: changes in oil or natural gas prices, the success of our drilling program, the timing of planned capital expenditures, availability of acquisitions, uncertainties in estimating proved reserves and forecasting production results, operational factors affecting the commencement or maintenance of producing wells, the condition of the capital markets generally, as well as our ability to access them, the proximity to and capacity of transportation facilities, uncertainties regarding environmental regulations or litigation and other legal or regulatory developments affecting our business, and the other factors discussed below and elsewhere in this prospectus and in other documents that we file with or furnish to the SEC, all of which are difficult to predict. Forward-looking statements may include statements about:

- our business strategy;
- our reserves;
- our technology;
- our cash flows and liquidity;
- our financial strategy, budget, projections and operating results;
- our oil and natural gas realized prices;
- the timing and amount of future production of oil and natural gas;
- the availability of drilling and production equipment;
- the availability of oil field labor;
- the amount, nature and timing of capital expenditures, including future exploration and development costs;
- the availability and terms of capital;
- our drilling of wells;
- government regulation and taxation of the oil and natural gas industry;
- our marketing of oil and natural gas;
- our exploitation projects or property acquisitions;
- our costs of exploiting and developing our properties and conducting other operations;
- general economic conditions;
- competition in the oil and natural gas industry;
- the effectiveness of our risk management and hedging activities;
- environmental liabilities;
- counterparty credit risk;

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- developments in oil-producing and natural gas-producing countries;
- our future operating results;
- estimated future reserves and the present value thereof; and
- our plans, objectives, expectations and intentions contained in this prospectus that are not historical.

Although we believe that the expectations conveyed by the forward-looking statements are reasonable based on information available to us on the date such forward-looking statements were made, no assurances can be given as to future results, levels of activity, achievements or financial condition.

You should not place undue reliance on any forward-looking statement and should recognize that the statements are predictions of future results, which may not occur as anticipated. Actual results could differ materially from those anticipated in the forward-looking statements and from historical results, due to the risks and uncertainties described above, as well as others not now anticipated. The impact of any one factor on a particular forward-looking statement is not determinable with certainty as such factors are interdependent upon other factors. The foregoing statements are not exclusive and further information concerning us, including factors that potentially could materially affect our financial results, may emerge from time to time. We do not intend to update forward-looking statements to reflect actual results or changes in factors or assumptions affecting such forward-looking statements, except as required by law, including the securities laws of the United States and the rules and regulations of the SEC.

## USE OF PROCEEDS

Unless we inform you otherwise in the prospectus supplement, the net proceeds from the sale of the securities will be used for general corporate purposes, which may include the following:

- repayment or refinancing of debt;
- acquisitions;
- working capital;
- capital expenditures; or
- repurchases and redemptions of securities.

Pending any specific application, we may initially invest funds in short-term marketable securities or apply them to the reduction of other short-term indebtedness.

### RATIO OF EARNINGS TO FIXED CHARGES

The following table contains our consolidated ratio of earnings to fixed charges for the periods indicated. You should read these ratios in connection with our consolidated financial statements, including the notes to those statements, incorporated by reference in this prospectus.

	Year Ended December 31,				
	2012	2011	2010	2009	2008
Ratio of earnings to fixed charges	(a)	(b)	180.0	(c)	2,604.0

- (a) During the period noted, our coverage ratio was less than 1:1. We would have needed to generate additional earnings of approximately \$36.1 million during the year ended December 31, 2012 to achieve a coverage ratio of 1:1.
- (b) During the period noted, our coverage ratio was less than 1:1. We would have needed to generate additional earnings of approximately \$17.1 million during the year ended December 31, 2011 to achieve a coverage ratio of 1:1.
- (c) During the period noted, our coverage ratio was less than 1:1. We would have needed to generate additional earnings of approximately \$24.4 million during the year ended December 31, 2009 to achieve a coverage ratio of 1:1.

For purposes of calculating the ratio of earnings to fixed charges:

- “earnings” consist of income (loss) before income taxes plus fixed charges and amortization of capitalized interest less interest capitalized; and
- “fixed charges” consist of interest expense (gross of interest income), capitalized interest, amortization of deferred loan costs and the estimated interest component of rental expense.

## DESCRIPTION OF THE DEBT SECURITIES AND GUARANTEES

The debt securities we may offer by this prospectus will be our general unsecured obligations. We may issue senior debt securities on a senior unsecured basis under an indenture between us and a trustee that we will name in a prospectus supplement (a “senior indenture”). We may issue subordinated debt securities under an indenture between us and a trustee that we will name in a prospectus supplement (a “subordinated indenture”). We refer to the senior indentures and the subordinated indentures collectively as the “indentures.” In this description of the debt securities, unless we state otherwise or the context clearly indicates otherwise, all references to the Company mean Matador Resources Company only.

The indentures will be substantially identical, except for provisions relating to subordination. The senior debt securities will constitute senior debt and will rank equally with all of the Company’s unsecured and unsubordinated debt. The subordinated debt securities will be subordinated to, and thus have a junior position to, the Company’s senior debt (as defined with respect to the series of subordinated debt securities) and may rank equally with or senior or junior to our other subordinated debt that may be outstanding from time to time.

We have summarized material provisions of the indentures and the debt securities below. This summary is not complete. We have filed the form of senior indenture and the form of subordinated indenture with the SEC as exhibits to the registration statement, and you should read the indentures for provisions that may be important to you.

### Provisions Applicable to Each Indenture

**General.** The indentures do not limit the amount of debt securities that may be issued under that indenture, and do not limit the amount of other unsecured debt or securities that the Company may issue. The Company may issue debt securities under the indentures from time to time in one or more series, each in an amount authorized prior to issuance.

The Company conducts substantially all of its operations through subsidiaries, and those subsidiaries generate substantial operating income and cash flow. As a result, distributions or advances from those subsidiaries are a significant source of funds needed to meet the debt service obligations of the Company. Contractual provisions or laws, as well as the subsidiaries’ financial conditions and operating requirements, may limit the ability of the Company to obtain cash from its subsidiaries that it requires to pay its debt service obligations, including any payments required to be made under the debt securities. In addition, unless the subsidiaries provide a subsidiary guarantee, holders of the debt securities will have a junior position to the claims of creditors of the subsidiaries of the Company on their assets and earnings.

If specified in the prospectus supplement, the debt securities will be general obligations of our subsidiaries that execute subsidiary guarantees. Unless otherwise specified in the prospectus supplement, such subsidiary guarantees will be unsecured obligations. See “—Subsidiary Guarantees.”

The indentures do not contain any covenants or other provisions designed to protect holders of the debt securities if we participate in a highly leveraged transaction or upon a change of control. The indentures also do not contain provisions that give holders the right to require us to repurchase their securities in the event of a decline in our credit ratings for any reason, including as a result of a takeover, recapitalization or similar restructuring or otherwise.

**Terms.** The prospectus supplement relating to any series of debt securities being offered will include specific terms relating to the offering. These terms will include some or all of the following:

- whether the debt securities will be senior or subordinated debt securities;
- the title of the debt securities;
- the total principal amount of the debt securities;

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- whether the debt securities will be issued in individual certificates to each holder or in the form of temporary or permanent global securities held by a depositary on behalf of holders;
- the date or dates on which the principal of and any premium on the debt securities will be payable;
- any interest rate, the date from which interest will accrue, interest payment dates and record dates for interest payments;
- any right to extend or defer the interest payment periods and the duration of the extension;
- whether and under what circumstances any additional amounts with respect to the debt securities will be payable;
- whether our subsidiaries will provide guarantees of the debt securities, and the terms of any subordination of such guarantee;
- the place or places where payments on the debt securities will be payable;
- any provisions for optional redemption or early repayment;
- any sinking fund or other provisions that would require the redemption, purchase or repayment of debt securities;
- the denominations in which the debt securities will be issued, if other than denominations of \$1,000 and integral multiples thereof;
- whether payments on the debt securities will be payable in foreign currency or currency units or another form and whether payments will be payable by reference to any index or formula;
- the portion of the principal amount of debt securities that will be payable if the maturity is accelerated, if other than the entire principal amount;
- any additional means of defeasance of the debt securities, any additional conditions or limitations to defeasance of the debt securities or any changes to those conditions or limitations;
- any changes or additions to the events of default or covenants described in this prospectus;
- any restrictions or other provisions relating to the transfer or exchange of debt securities;
- any terms for the conversion or exchange of the debt securities for other securities of the Company or any other entity;
- with respect to any subordinated indenture, any changes to the subordination provisions for the subordinated debt securities; and
- any other terms of the debt securities not prohibited by the applicable indenture.

The Company may sell the debt securities at a discount, which may be substantial, below their stated principal amount. These debt securities may bear no interest or interest at a rate that at the time of issuance is below market rates. If the Company sells these debt securities, we will describe in the prospectus supplement any material United States federal income tax consequences and other special considerations.

If the Company sells any of the debt securities for any foreign currency or currency unit or if payments on the debt securities are payable in any foreign currency or currency unit, we will describe in the prospectus supplement the restrictions, elections, tax consequences, specific terms and other information relating to those debt securities and the foreign currency or currency unit.

***Subsidiary Guarantees.*** If specified in the prospectus supplement, the Company's payment obligations under any series of the debt securities may be jointly and severally guaranteed by one or more of the Company's subsidiaries. Such guarantees will be full and unconditional. If a series of debt securities is so guaranteed by any of the Company's subsidiaries, the applicable subsidiaries will execute a supplemental indenture or notation of guarantee as further evidence of their guarantee. The applicable prospectus supplement will describe the terms of any guarantee by our subsidiaries.

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The obligations of each subsidiary under its subsidiary guarantee may be limited to the maximum amount that will not result in such guarantee obligations constituting a fraudulent conveyance or fraudulent transfer under federal or state law, after giving effect to all other contingent and fixed liabilities of that subsidiary and any collections from or payments made by or on behalf of any other subsidiary guarantor in respect of its obligations under its subsidiary guarantee.

Each indenture may restrict consolidations or mergers with or into a subsidiary guarantor or provide for the release of a subsidiary from a subsidiary guarantee, as set forth in a related prospectus supplement, the applicable indenture and any applicable related supplemental indenture.

If a series of debt securities is guaranteed by any of the Company's future subsidiaries and is designated as subordinate to the Company's senior debt, then the guarantee by those subsidiaries will be subordinated to such subsidiary's senior debt and will be subordinated to any guarantees by those subsidiaries of the Company's senior debt. See "Provisions Applicable Solely to Subordinated Debt Securities—Subordination."

As of April 5, 2013, the Company's subsidiaries are directly or indirectly 100% owned by the Company. Any guarantees by the Company's subsidiaries will be full and unconditional (except for customary release provisions). The Company has no assets or obligations independent of the subsidiaries, and there are no significant restrictions upon the ability of the subsidiaries to distribute funds to the Company. In the event that more than one of the subsidiaries provides guarantees of any debt securities issued by the Company, such guarantees will constitute joint and several obligations.

**Consolidation, Merger and Sale of Assets.** The indentures generally permit a consolidation or merger between the Company and another entity. They also permit the Company to sell, lease, convey, transfer or otherwise dispose of all or substantially all of its assets. The Company has agreed, however, that it will not consolidate with or merge into any entity or sell, lease, convey, transfer or otherwise dispose of all or substantially all of its assets to any entity unless:

- immediately after giving effect to the transaction, no default or event of default would occur and be continuing or would result from the transaction; and
- if it is not the continuing entity, the resulting entity or transferee is organized and existing under the laws of any U.S. jurisdiction and assumes the due and punctual payments on the debt securities and the performance of its covenants and obligations under the indenture and the debt securities.

Upon any such consolidation or merger in which the Company is not the continuing entity or any such asset sale, lease, conveyance, transfer or disposition involving the Company, the resulting entity or transferee will be substituted for the Company under the applicable indenture and debt securities. In the case of an asset sale, conveyance, transfer or disposition other than a lease, the Company will be released from the applicable indenture if the resulting transferee is substituted for the Company in accordance with the foregoing.

**Events of Default.** Unless we inform you otherwise in the applicable prospectus supplement, the following are events of default with respect to a series of debt securities:

- failure to pay interest when due on that series of debt securities for 30 days;
- failure to pay principal of or any premium on that series of debt securities when due;
- failure to make any sinking fund payment when required for that series for 30 days;
- failure to comply with any covenant or agreement in that series of debt securities or the applicable indenture (other than an agreement or covenant that has been included in the indenture solely for the benefit of one or more other series of debt securities) for 90 days after written notice by the trustee or by the holders of at least 25% in principal amount of the outstanding debt securities issued under that indenture that are affected by that failure;
- specified events involving bankruptcy, insolvency or reorganization of the Company; and



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- any other event of default provided for in that series of debt securities.

A default under one series of debt securities will not necessarily be a default under another series unless we inform you otherwise in the applicable prospectus supplement. The indentures provide that the trustee generally must mail notice of a default or event of default of which it has actual knowledge to the registered holders of the applicable debt securities within 90 days of occurrence. However, the trustee may withhold notice to the holders of the debt securities of any default or event of default (except in any payment on the debt securities) if the trustee considers it in the interest of the holders of the debt securities to do so.

If an event of default relating to certain events of bankruptcy, insolvency or reorganization occurs, the principal of and interest on all the debt securities issued under the applicable indenture will become immediately due and payable without any action on the part of the trustee or any holder. Unless we inform you otherwise in the applicable prospectus supplement, if any other event of default for any series of debt securities occurs and is continuing, the trustee or the holders of at least 25% in principal amount of the outstanding debt securities of the series affected by the default (or, in some cases, 25% in principal amount of all debt securities issued under the applicable indenture that are affected, voting as one class) may declare the principal of and all accrued and unpaid interest on those debt securities immediately due and payable. The holders of a majority in principal amount of the outstanding debt securities of the series affected by the event of default (or, in some cases, of all debt securities issued under the applicable indenture that are affected, voting as one class) may in some cases rescind this accelerated payment requirement.

Unless we inform you otherwise in the applicable prospectus supplement, a holder of a debt security of any series issued under an indenture may pursue any remedy under that indenture only if:

- the holder gives the trustee written notice of a continuing event of default for that series;
- the holders of at least 25% in principal amount of the outstanding debt securities of that series make a written request to the trustee to pursue the remedy;
- the holders offer to the trustee indemnity satisfactory to the trustee;
- the trustee fails to act for a period of 60 days after receipt of the request and offer of indemnity; and
- during that 60-day period, the holders of a majority in principal amount of the debt securities of that series do not give the trustee a direction inconsistent with the request.

This provision does not, however, affect the right of a holder of a debt security to sue for enforcement of any overdue payment.

In most cases, and subject to the terms of the applicable prospectus supplement, holders of a majority in principal amount of the outstanding debt securities of a series (or of all debt securities issued under the applicable indenture that are affected, voting as one class) may direct the time, method and place of:

- with respect to debt securities of a series, conducting any proceeding for any remedy available to the trustee and exercising any trust or power conferred on the trustee relating to or arising as a result of specified events of default; or
- with respect to all debt securities issued under the applicable indenture that are affected, conducting any proceeding for any remedy available to the trustee and exercising any trust or power conferred on the trustee relating to or arising other than as a result of such specified events of default.

The trustee, however, may refuse to follow any such direction that conflicts with law or the indentures, is unduly prejudicial to the rights of other holders of the debt securities or would involve the trustee in personal liability. In addition, prior to acting at the direction of holders, the trustee will be entitled to be indemnified by those holders against any loss and expenses caused thereby.

The indentures require the Company to file each year with the trustee a written statement as to its compliance with the covenants contained in the applicable indenture.

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**Modification and Waiver.** Unless we inform you otherwise in the applicable prospectus supplement, each indenture may be amended or supplemented if the holders of a majority in principal amount of the outstanding debt securities of all series issued under that indenture that are affected by the amendment or supplement (acting as one class) consent to it. Without the consent of the holder of each debt security issued under the indenture and affected, however, no modification to that indenture may:

- reduce the amount of debt securities whose holders must consent to an amendment, supplement or waiver;
- reduce the rate of or change the time for payment of interest on the debt security;
- reduce the principal of the debt security or change its stated maturity;
- reduce any premium payable on the redemption of the debt security or change the time at which the debt security may or must be redeemed;
- change any obligation to pay additional amounts on the debt security;
- make payments on the debt security payable in currency other than as originally stated in the debt security;
- impair the holder's right to institute suit for the enforcement of any payment on the debt security;
- make any change in the percentage of principal amount of debt securities necessary to waive compliance with certain provisions of the indenture or to make any change in the provision related to modification;
- with respect to the subordinated indenture, modify the provisions relating to the subordination of any subordinated debt security in a manner adverse to the holder of that security; or
- waive a continuing default or event of default regarding any payment on the debt securities.

Unless we inform you otherwise in the applicable prospectus supplement, each indenture may be amended or supplemented or any provision of that indenture may be waived without the consent of any holders of debt securities issued under that indenture in certain circumstances, including:

- to cure any ambiguity, omission, defect or inconsistency;
- to provide for the assumption of the obligations under the indenture of the Company by a successor upon any merger or consolidation or asset sale, lease, conveyance, transfer or other disposition of all or substantially all of our assets, in each case as permitted under the indenture;
- to provide for uncertificated debt securities in addition to or in place of certificated debt securities or to provide for the issuance of bearer debt securities;
- to provide any security for, or to add any guarantees of or any additional obligors on any series of debt securities;
- to comply with any requirement to effect or maintain the qualification of that indenture under the Trust Indenture Act of 1939;
- to add covenants that would benefit the holders of any debt securities or to surrender any rights the Company has under that indenture;
- to add events of default with respect to any debt securities;
- to make any change that does not adversely affect any outstanding debt securities of any series issued under that indenture in any material respect;
- to establish the form or terms of any debt security;
- to supplement the provisions of an indenture to permit or facilitate defeasance or discharge of securities that does not adversely affect any outstanding debt securities of any series issued under that indenture in any material respect; and

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- to evidence and provide for the acceptance of appointment under the indenture by a successor trustee with respect to debt securities of one or more series and to add to or change any of the provisions of the indenture as shall be necessary to provide for or facilitate the administration of the trusts under the indenture by more than one trustee.

Unless we inform you otherwise in the applicable prospectus supplement, the holders of a majority in principal amount of the outstanding debt securities of any series (or, in some cases, of all debt securities issued under the applicable indenture that are affected, voting as one class) may waive any existing or past default or event of default with respect to those debt securities. Those holders may not, however, waive any default or event of default in any payment on any debt security or compliance with a provision that cannot be amended or supplemented without the consent of each holder affected.

**Defeasance.** When we use the term defeasance, we mean discharge from some or all of the Company's obligations under an indenture. If any combination of funds or government securities are deposited with the trustee under an indenture sufficient to make payments on the debt securities of a series issued under that indenture on the dates those payments are due and payable, then, at the Company's option, either of the following will occur:

- The Company will be discharged from its obligations with respect to the debt securities of that series ("legal defeasance"); or
- The Company will no longer have any obligation to comply with the consolidation, merger and sale of assets covenant and other specified covenants relating to the debt securities of that series, and the related events of default will no longer apply ("covenant defeasance").

If a series of debt securities is defeased, the holders of the debt securities of the series affected will not be entitled to the benefits of the applicable indenture, except for obligations to register the transfer or exchange of debt securities, replace stolen, lost or mutilated debt securities or maintain paying agencies and hold moneys for payment in trust. In the case of covenant defeasance, the obligation of the Company to pay principal, premium and interest on the debt securities will also survive.

Unless we inform you otherwise in the prospectus supplement, we will be required to deliver to the trustee an opinion of counsel that the deposit and related defeasance would not cause the holders of the debt securities to recognize income, gain or loss for U.S. federal income tax purposes. If we elect legal defeasance, that opinion of counsel must be based upon a ruling from the U.S. Internal Revenue Service or a change in law to that effect.

**Governing Law.** New York law will govern the indentures and the debt securities.

**Trustee.** If an event of default occurs under an indenture and is continuing, the trustee under that indenture will be required to use the degree of care and skill of a prudent person in the conduct of that person's own affairs. The trustee will become obligated to exercise any of its powers under that indenture at the request of any of the holders of any debt securities issued under that indenture only after those holders have offered the trustee indemnity satisfactory to it.

**Form, Exchange, Registration and Transfer.** Unless we inform you otherwise in the applicable prospectus supplement, the debt securities will be issued in registered form, without interest coupons. There will be no service charge for any registration of transfer or exchange of the debt securities. However, payment of any transfer tax or similar governmental charge payable for that registration may be required.

Debt securities of any series will be exchangeable for other debt securities of the same series, the same total principal amount and the same terms but in different authorized denominations in accordance with the applicable indenture. Holders may present debt securities for registration of transfer at the office of the security registrar or any transfer agent the Company designates. The security registrar or transfer agent will effect the transfer or exchange if its requirements and the requirements of the applicable indenture are met.

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The trustee will be appointed as security registrar for the debt securities. If a prospectus supplement refers to any transfer agents the Company initially designates, the Company may at any time rescind that designation or approve a change in the location through which any transfer agent acts. The Company is required to maintain an office or agency for transfers and exchanges in each place of payment. The Company may at any time designate additional transfer agents for any series of debt securities.

Unless we inform you otherwise in the applicable prospectus supplement, in the case of any redemption, the Company will not be required to register the transfer or exchange of:

- any debt security during a period beginning 15 business days prior to the mailing of any notice of redemption or mandatory offer to repurchase and ending on the close of business on the day of mailing of such notice; or
- any debt security that has been called for redemption in whole or in part, except the unredeemed portion of any debt security being redeemed in part.

**Payment and Paying Agent.** Unless we inform you otherwise in a prospectus supplement, payments on the debt securities will be made in U.S. dollars at the office of the trustee and any paying agent. At our option, however, payments may be made by wire transfer for global debt securities or by check mailed to the address of the person entitled to the payment as it appears in the security register. Unless we inform you otherwise in a prospectus supplement, interest payments will be made to the person in whose name the debt security is registered at the close of business on the record date for the interest payment.

Unless we inform you otherwise in a prospectus supplement, the trustee under the applicable indenture will be designated as the paying agent for payments on debt securities issued under that indenture. We may at any time designate additional paying agents or rescind the designation of any paying agent or approve a change in the office through which any paying agent acts.

If the principal of or any premium or interest on debt securities of a series is payable on a day that is not a business day, the payment will be made on the next succeeding business day as if made on the date that the payment was due and no interest will accrue on that payment for the period from and after the due date to the date of that payment on the next succeeding business day. For these purposes, unless we inform you otherwise in a prospectus supplement, a “business day” is any day that is not a Saturday, a Sunday or a day on which banking institutions in any of New York, New York or a place of payment on the debt securities of that series is authorized or obligated by law, regulation or executive order to remain closed.

Subject to the requirements of any applicable abandoned property laws, the trustee and paying agent will pay to us upon written request any money held by them for payments on the debt securities that remains unclaimed for two years after the date upon which that payment has become due. After payment to us, holders entitled to the money must look to us for payment. In that case, all liability of the trustee or paying agent with respect to that money will cease.

**Notices.** Any notice required by the indentures to be provided to holders of the debt securities will be given by mail to the registered holders at the addresses as they appear in the security register.

**Replacement of Debt Securities.** The Company will replace any debt securities that become mutilated, destroyed, stolen or lost at the expense of the holder upon delivery to the trustee of the mutilated debt securities or evidence of the loss, theft or destruction satisfactory to the Company and the trustee. In the case of a lost, stolen or destroyed debt security, indemnity satisfactory to the trustee and the Company may be required at the expense of the holder of the debt securities before a replacement debt security will be issued.

**Book-Entry Debt Securities.** The debt securities of a series may be issued in the form of one or more global debt securities that would be deposited with a depositary or its nominee identified in the prospectus supplement.

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Global debt securities may be issued in either temporary or permanent form. We will describe in the prospectus supplement the terms of any depositary arrangement and the rights and limitations of owners of beneficial interests in any global debt security.

### **Provisions Applicable Solely to Subordinated Debt Securities**

**Subordination.** Under the subordinated indenture, payment of the principal of and any premium and interest on the subordinated debt securities will generally be subordinated and junior in right of payment to the prior payment in full of all Senior Debt, as described below. Unless we inform you otherwise in the prospectus supplement, the Company may not make any payment of principal or any premium or interest on the subordinated debt securities if it fails to pay the principal, interest, premium or any other amounts on any Senior Debt when due.

The subordination does not affect the Company's obligation, which is absolute and unconditional, to pay, when due, the principal of and any premium and interest on the subordinated debt securities. In addition, the subordination does not prevent the occurrence of any default under the subordinated indenture.

Unless we inform you otherwise in the applicable prospectus supplement, the subordinated indenture will not limit the amount of Senior Debt that the Company may incur. As a result of the subordination of the subordinated debt securities, if the Company becomes insolvent, holders of subordinated debt securities may receive less on a proportionate basis than other creditors.

Unless we inform you otherwise in the applicable prospectus supplement, "Senior Debt" will mean all debt, including guarantees, of the Company, unless the debt states that it is not senior to any subordinated debt securities or other junior debt of the Company. Senior Debt with respect to a series of subordinated debt securities could include other series of debt securities issued under a subordinated indenture.

## DESCRIPTION OF CAPITAL STOCK

Our authorized capital stock consists of 80,000,000 shares of common stock, par value \$0.01 per share, and 2,000,000 shares of preferred stock, par value \$0.01 per share. At April 5, 2013, we had 55,842,938 outstanding shares of common stock and no outstanding shares of preferred stock.

### Common Stock

Holders of all of our common stock will be entitled to receive their pro rata shares of dividends in the amounts and at the times declared by our board of directors in its discretion out of funds legally available for the payment of dividends.

Subject to any special voting rights of any series of preferred stock that we may issue in the future, each share of common stock has one vote on all matters voted on by our shareholders, including the election of directors. No share of common stock has any cumulative voting or preemptive rights or is redeemable, assessable or entitled to the benefits of any sinking or repurchase fund. Holders of common stock will share equally in our assets on liquidation after payment or provision for all liabilities and any preferential liquidation rights of any preferred stock then outstanding. All outstanding shares of common stock are fully paid and non-assessable.

### Preferred Stock

At the direction of our board of directors, we may issue shares of preferred stock from time to time. Our board of directors may, without any action by holders of common stock, adopt resolutions to issue preferred stock by establishing the number, rights and preferences of, and designating, one or more series of preferred stock. No series of preferred stock has been designated and established by our board of directors. The rights of any series of preferred stock may include, among others:

- general or special voting rights;
- preferential liquidation or preemptive rights;
- preferential cumulative or noncumulative dividend rights;
- redemption or put rights; and
- conversion or exchange rights.

We may issue shares of, or rights to purchase shares of, preferred stock the terms of which might:

- adversely affect voting or other rights evidenced by, or amounts otherwise payable with respect to, the common stock;
- discourage an unsolicited proposal to acquire us; or
- facilitate a particular business combination involving us.

Any of these actions could discourage a transaction that some or a majority of our shareholders might believe to be in their best interests or in which our shareholders might receive a premium for their stock over our then market price.

### Business Combinations under Texas Law

A number of provisions of Texas law, our certificate of formation and bylaws could make more difficult the acquisition of Matador by means of a tender offer, a proxy contest or otherwise and the removal of incumbent officers and directors. These provisions are intended to discourage coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of Matador to negotiate first with our board of directors.

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We are subject to the provisions of Title 2, Chapter 21, Subchapter M of the Texas Business Organizations Code (the “Texas Business Combination Law”). That law provides that a Texas corporation may not engage in specified types of business combinations, including mergers, consolidations and asset sales, with a person, or an affiliate or associate of that person, who is an “affiliated shareholder.” An “affiliated shareholder” is generally defined as the holder of 20% or more of the corporation’s voting shares, for a period of three years from the date that person became an affiliated shareholder. The law’s prohibitions do not apply if:

- the business combination or the acquisition of shares by the affiliated shareholder was approved by the board of directors of the corporation before the affiliated shareholder became an affiliated shareholder; or
- the business combination was approved by the affirmative vote of the holders of at least two-thirds of the outstanding voting shares of the corporation not beneficially owned by the affiliated shareholder, at a meeting of shareholders called for that purpose, not less than six months after the affiliated shareholder became an affiliated shareholder.

Because we have a class of voting shares registered under the Exchange Act, we are considered an “issuing public corporation” for purposes of this law. The Texas Business Combination Law does not apply to the following:

- the business combination of an issuing public corporation: where the corporation’s original charter or bylaws contain a provision expressly electing not to be governed by the Texas Business Combination Law; or that adopts an amendment to its charter or bylaws, by the affirmative vote of the holders, other than affiliated shareholders, of at least two-thirds of the outstanding voting shares of the corporation, expressly electing not to be governed by the Texas Business Combination Law and so long as the amendment does not take effect for 18 months following the date of the vote and does not apply to a business combination with an affiliated shareholder who became affiliated on or before the effective date of the amendment;
- a business combination of an issuing public corporation with an affiliated shareholder that became an affiliated shareholder inadvertently, if the affiliated shareholder divests itself, as soon as possible, of enough shares to no longer be an affiliated shareholder and would not at any time within the three-year period preceding the announcement of the business combination have been an affiliated shareholder but for the inadvertent acquisition;
- a business combination with an affiliated shareholder who became an affiliated shareholder through a transfer of shares by will or intestacy and continuously was an affiliated shareholder until the announcement date of the business combination; and
- a business combination of a corporation with its wholly owned Texas subsidiary if the subsidiary is not an affiliate or associate of the affiliated shareholder other than by reason of the affiliated shareholder’s beneficial ownership of voting shares of the corporation.

Neither our certificate of formation nor our bylaws contain any provision expressly providing that we will not be subject to the Texas Business Combination Law. The Texas Business Combination Law may have the effect of inhibiting a non-negotiated merger or other business combination involving the Company, even if that event would be beneficial to our shareholders.

### **Action by Consent**

Our bylaws and Texas law provide that any action that can be taken at any special or annual meeting of shareholders may be taken by unanimous written consent of all shareholders entitled to vote.

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### **Certain Charter and Bylaw Provisions**

Our certificate of formation and bylaws contain certain provisions that could discourage potential takeover attempts and make it more difficult for our shareholders to change management or receive a premium for their shares. These provisions include:

- authorization for our board of directors to issue preferred stock without shareholder approval;
- a classified board of directors so that not all members of our board of directors are elected at one time;
- the prohibition of cumulative voting in the election of directors; and
- a limitation on the ability of shareholders to call special meetings to those owning at least 25% of our outstanding shares of common stock.

### **Limitation of Liability and Indemnification of Officers and Directors**

Our certificate of formation provides that our directors are not liable to the Company or its shareholders for monetary damages for an act or omission in their capacity as a director. A director may, however, be found liable for:

- any breach of the director's duty of loyalty to the Company or its shareholders;
- acts or omissions not in good faith that constitute a breach of the director's duty to the Company;
- acts or omissions that involve intentional misconduct or a knowing violation of law;
- any transaction from which the director receives an improper benefit; or
- acts or omissions for which the liability is expressly provided by an applicable statute.

Our certificate of formation also provides that we will indemnify our directors, and may indemnify our officers, employees and agents, to the fullest extent permitted by applicable Texas law from any expenses, liabilities or other matters. Insofar as indemnification for liabilities arising under the Securities Act may be permitted for directors, officers and controlling persons of the Company under our certificate of formation, it is the position of the SEC that such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

### **Indemnification Agreements**

We have entered into indemnification agreements with each of our officers and directors. Under these agreements, we have agreed to indemnify the director or officer who acts on behalf of the Company and is made or threatened to be made a party to any action or proceeding for expenses, judgments, fines and amounts paid in settlement that are actually and reasonably incurred in connection with the action or proceeding. The indemnity provisions apply whether the action was instituted by a third party or by us. Generally, the principal limitation on our obligation to indemnify the director or officer will be if it is determined by a court of law, not subject to further appeal, that indemnification is prohibited by applicable law or the provisions of the indemnification agreement.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Registrar and Transfer Company.

### **Listing**

Our common stock is listed on the NYSE under the symbol "MTDR."



## DESCRIPTION OF WARRANTS

We may issue warrants that entitle the holder to purchase debt securities, preferred stock, common stock or other securities. Warrants may be issued independently or together with debt securities, preferred stock or common stock offered by any prospectus supplement and may be attached to or separate from any such offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent, all as will be set forth in the prospectus supplement relating to the particular issue of warrants. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders of warrants or beneficial owners of warrants.

The prospectus supplement relating to any warrants we may offer will include specific terms relating to the offering. We will file the form of any warrant agreement with the SEC, and you should read the warrant agreement for provisions that may be important to you. The prospectus supplement will include some or all of the following terms:

- the title of the warrants;
- the aggregate number of warrants offered;
- the designation, number and terms of the debt securities, common stock, preferred stock, rights or other securities purchasable upon exercise of the warrants, and procedures by which the number of securities purchasable may be adjusted;
- the exercise price of the warrants;
- the dates or periods during which the warrants are exercisable;
- the designation and terms of any securities with which the warrants are issued;
- if the warrants are issued as a unit with another security, the date, if any, on and after which the warrants and the other security will be separately transferable;
- if the exercise price is not payable in U.S. dollars, the foreign currency, currency unit or composite currency in which the exercise price is denominated;
- any minimum or maximum amount of warrants that may be exercised at any one time; and
- any terms, procedures and limitations relating to the transferability, exchange or exercise of the warrants.

Warrants will be issued in registered form only. The exercise price for warrants will be subject to adjustment in accordance with the applicable prospectus supplement.

Each warrant will entitle the holder thereof to purchase such principal amount of debt securities or such number of shares of preferred stock, common stock or other securities at such exercise price as shall in each case be set forth in, or calculable from, the prospectus supplement relating to the warrants, which exercise price may be subject to adjustment upon the occurrence of certain events as set forth in such prospectus supplement. After the close of business on the expiration date, or such later date to which such expiration date may be extended by us, unexercised warrants will become void. The place or places where, and the manner in which, warrants may be exercised shall be specified in the prospectus supplement relating to such warrants.

Prior to the exercise of any warrants to purchase debt securities, preferred stock, common stock or other securities, holders of such warrants will not have any of the rights of holders of debt securities, preferred stock, common stock or other securities, as the case may be, purchasable upon such exercise, including the right to receive payments of principal of, premium, if any, or interest, if any, on the debt securities purchasable upon such exercise or to enforce covenants in the applicable Indenture, or to receive payments of dividends, if any, on the preferred stock, or common stock purchasable upon such exercise, or to exercise any applicable right to vote.

## PLAN OF DISTRIBUTION

We may sell the securities in and outside the United States through underwriters or dealers, directly to purchasers, through agents or through a combination of any of these methods. The prospectus supplement will include the following information:

- the terms of the offering;
- the names of any underwriters or agents;
- the purchase price of the securities from us and, if the purchase price is not payable in U.S. dollars, the currency or composite currency in which the purchase price is payable;
- the net proceeds to us from the sale of the securities;
- any delayed delivery arrangements;
- any underwriting discounts, commissions and other items constituting underwriters' compensation;
- the initial public offering price;
- any discounts or concessions allowed or reallocated or paid to dealers; and
- any commissions paid to agents.

In addition, we may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement. If so, the third parties may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock, and may use securities received from us in settlement of those derivatives to close out any related open borrowings of stock. The third parties in such sale transactions will be underwriters and, if not identified in this prospectus, will be identified in the applicable prospectus supplement (or a post-effective amendment). We or one of our affiliates may loan or pledge securities to a financial institution or other third party that in turn may sell the securities using this prospectus. Such financial institution or third party may transfer its short position to investors in our securities or in connection with a simultaneous offering of other securities offered by this prospectus or otherwise.

### **Sale Through Underwriters or Dealers**

If we use underwriters in the sale of securities, the underwriters will acquire the securities for their own account. The underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to conditions, and the underwriters will be obligated to purchase all the securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

During and after an offering through underwriters, the underwriters may purchase and sell the securities in the open market. These transactions may include over-allotment and stabilizing transactions and purchases to cover syndicate short positions created in connection with the offering. The underwriters may also impose a penalty bid, whereby selling concessions allowed to syndicate members or other broker-dealers for the offered securities sold for their account may be reclaimed by the syndicate if such offered securities are repurchased by the syndicate in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the offered securities, which may be higher than the price that might otherwise prevail in the open market. If commenced, these activities may be discontinued at any time.

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If we use dealers in the sale of securities, we will sell the securities to them as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale. The dealers participating in any sale of the securities may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will include in the prospectus supplement the names of the dealers and the terms of the transaction.

### **Direct Sales and Sales Through Agents**

We may sell the securities directly. In that event, no underwriters or agents would be involved. We may also sell the securities through agents we designate from time to time. In the prospectus supplement, we will name any agent involved in the offer or sale of the securities, and we will describe any commissions payable by us to the agent. Unless we inform you otherwise in the prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any such sales in the prospectus supplement.

### **Delayed Delivery Contracts**

If we so indicate in the prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement will describe the commission payable for solicitation of those contracts.

### **Remarketing Arrangements**

Offered securities also may be offered and sold, if so indicated in the applicable prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as agents for us. Any remarketing firm will be identified and the terms of its agreements, if any, with us and its compensation will be described in the applicable prospectus supplement. Remarketing firms may be deemed to be underwriters within the meaning of the Securities Act in connection with the securities remarketed.

### **General Information**

We may have agreements with the agents, dealers and underwriters to indemnify them against civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments that the agents, dealers or underwriters may be required to make. Agents, dealers and underwriters may engage in transactions with us or perform services for us in the ordinary course of their businesses.

The securities may or may not be listed on a national securities exchange. We cannot assure you that there will be a market for the securities.

**LEGAL MATTERS**

The validity of the offered securities will be passed upon for us by Haynes and Boone, LLP, Dallas, Texas, our outside legal counsel. Any underwriters will be advised about legal matters relating to any offering by their own legal counsel.

**EXPERTS**

The consolidated financial statements of Matador Resources Company and its subsidiaries as of December 31, 2012 and 2011, and for each of the three years in the period ended December 31, 2012, and management's assessment of the effectiveness of internal control over financial reporting incorporated by reference in this prospectus and elsewhere in the registration statement have been so incorporated by reference in reliance upon the reports of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in giving said reports.

The estimates of proved reserves and future net revenue of Matador Resources Company at December 31, 2012, 2011 and 2010 have been audited by Netherland, Sewell & Associates, Inc., independent reservoir engineers, and such audit reports are incorporated by reference in this prospectus.



**\$300,000,000**

**SENIOR DEBT SECURITIES  
SUBORDINATED DEBT SECURITIES  
COMMON STOCK  
PREFERRED STOCK  
WARRANTS  
GUARANTEES OF DEBT SECURITIES  
PROSPECTUS**

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth expenses payable by Matador in connection with the issuance and distribution of the securities being registered. All the amounts shown are estimates, except for the SEC registration fee.

SEC registration fee	\$ 40,920
Printing expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Fees and expenses of trustee and counsel	*
Miscellaneous	*
Total	<u>\$ *</u>

\* Estimated expenses are not presently known. The foregoing sets forth the general categories of expenses (other than underwriting discounts and commissions) that we anticipate we will incur in connection with the offering of securities under this registration statement. An estimate of the aggregate expenses in connection with the issuance and distribution of the securities being offered will be included in the applicable prospectus supplement.

**Item 15. Indemnification of Directors and Officers**

Matador Resources Company and all of its corporate subsidiaries are incorporated in Texas, and Matador's limited partnership subsidiary is a Texas limited partnership. Matador and each of its subsidiaries are governed by the Texas Business Organizations Code ("TBOC"). Chapter 8 of the TBOC permits a corporation to indemnify a person who was, is or is threatened to be named in a legal proceeding by virtue of such person's position in the corporation if it is determined that such person: (a) conducted himself in good faith, (b) reasonably believed, in the case of conduct in his official capacity as a director or officer of the corporation, that his conduct was in the corporation's best interest or, in other cases, that his conduct was at least not opposed to the corporation's best interests and (c) in the case of any criminal proceeding, did not have reasonable cause to believe that his conduct was unlawful. In addition, the TBOC requires a corporation to indemnify a director or officer for any action that such director or officer is wholly successful, in defending on the merits or otherwise, in the defense of the proceeding.

Under certain circumstances, a corporation may also advance expenses to any of the above persons. The TBOC also permits a corporation to purchase and maintain insurance or to make other arrangements on behalf of any of such persons against any liability asserted against and incurred by the person in such capacity, or arising out of the person's status as such a person, whether or not the corporation would have the powers to indemnify the person against the liability under applicable law.

**Matador Resources Company**

Our amended and restated certificate of formation provides that our directors are not liable to the Company or its shareholders for monetary damages for an act or omission in their capacity as a director. A director may, however, be found liable for:

- any breach of the director's duty of loyalty to the Company or its shareholders;
- acts or omissions not in good faith that constitute a breach of the director's duty to the Company;
- acts or omissions that involve intentional misconduct or a knowing violation of law;
- any transaction from which the director receives an improper benefit; or
- acts or omissions for which the liability is expressly provided by an applicable statute.

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Our certificate of formation also provides that we will indemnify our directors, and may indemnify our officers, employees and agents, to the fullest extent permitted by applicable Texas law from any expenses, liabilities or other matters. Insofar as indemnification for liabilities arising under the Securities Act may be permitted for directors, officers and controlling persons of Matador under our certificate of formation, it is the position of the SEC that such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

We have obtained directors' and officers' insurance to cover our directors, officers and employees for certain liabilities.

We have entered into indemnification agreements with each of our directors and officers. Under these agreements, we have agreed to indemnify the director or officer who acts on behalf of Matador and is made or threatened to be made a party to any action or proceeding for expenses, judgments, fines and amounts paid in settlement that are actually and reasonably incurred in connection with the action or proceeding. The indemnity provisions apply whether the action was instituted by a third party or by us. Generally, the principal limitation on our obligation to indemnify the director or officer will be if it is determined by a court of law, not subject to further appeal, that indemnification is prohibited by applicable law or the provisions of the indemnification agreement.

### **Longwood Gathering and Disposal Systems, LP**

Section 8.003 of the TBOC provides that the governing documents of a limited partnership may adopt the general statutory indemnification provisions of Chapter 8 of the TBOC or may contain enforceable provisions relating to: (1) indemnification; (2) advancement of expenses; or (3) insurance or another arrangement to indemnify or hold harmless a governing person.

Section 7.9 of the limited partnership agreement (the "Longwood LP Agreement") of Longwood Gathering and Disposal Systems, LP ("Longwood LP" or the "Partnership") provides that Longwood LP will indemnify its general partner, its affiliates and the respective officers, directors, managers, partners, members, employees and agents of each, to the fullest extent permitted by applicable Texas law from and against all losses, costs, liabilities, damages and expenses, including costs of lawsuits and attorney's fees, incurred by any of them in connection with the conduct of Longwood LP's affairs or the performance of the general partner's responsibilities. However, the Partnership will not indemnify any party for an act that constitutes bad faith, gross negligence or willful misconduct. The Longwood LP Agreement provides that the Partnership will advance the expenses associated with the defense of any related action; however, the satisfaction of any indemnification obligation will be from and limited to the Partnership's assets.

Matador has obtained directors' and officers' insurance that covers Longwood LP's officers and employees for certain liabilities.

### **Longwood Gathering and Disposal Systems GP, Inc.**

The certificate of formation (the "Longwood GP Certificate") of Longwood Gathering and Disposal Systems GP, Inc. ("Longwood GP") provides that Longwood GP may indemnify its directors, officers, employees and agents, to the fullest extent permitted by applicable Texas law from any expenses, liabilities or other matters and may purchase and maintain liability, indemnification and/or other similar insurance as the board of directors shall deem necessary or appropriate in its sole discretion on behalf of Longwood GP's directors, officers, employees and agents against expense, liability or loss asserted or incurred by them in their capacities as directors, officers, employees and agents.

Matador has obtained directors' and officers' insurance that covers Longwood GP's directors, officers, employees and agents for certain liabilities.

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### **Matador Production Company**

The amended and restated certificate of formation (the “MPC Certificate”) of Matador Production Company (“MPC”) provides that MPC may indemnify its directors, officers, employees and agents, to the fullest extent permitted by applicable Texas law from any expenses, liabilities or other matters and may purchase and maintain liability, indemnification and/or other similar insurance as the board of directors shall deem necessary or appropriate in its sole discretion on behalf of MPC’s directors, officers, employees and agents against expense, liability or loss asserted or incurred by them in their capacities as directors, officers, employees and agents.

Matador has obtained directors’ and officers’ insurance that covers MPC’s directors, officers, employees and agents for certain liabilities.

### **MRC Energy Company**

The second amended and restated certificate of formation (the “Energy Certificate”) of MRC Energy Company (“Energy”) provides that Energy may indemnify its directors, officers, employees and agents, to the fullest extent permitted by applicable Texas law from any expenses, liabilities or other matters and may purchase and maintain liability, indemnification and/or other similar insurance as the board of directors shall deem necessary or appropriate in its sole discretion on behalf of Energy’s directors, officers, employees and agents against expense, liability or loss asserted or incurred by them in their capacities as directors, officers, employees and agents.

Matador has obtained directors’ and officers’ insurance that covers Energy’s directors, officers, employees and agents for certain liabilities.

### **MRC Permian Company**

The certificate of formation (the “Permian Certificate”) of MRC Permian Company (“Permian”) provides that Permian may indemnify its directors, officers, employees and agents, to the fullest extent permitted by applicable Texas law from any expenses, liabilities or other matters and may purchase and maintain liability, indemnification and/or other similar insurance as the board of directors shall deem necessary or appropriate in its sole discretion on behalf of Permian’s directors, officers, employees and agents against expense, liability or loss asserted or incurred by them in their capacities as directors, officers, employees and agents.

Matador has obtained directors’ and officers’ insurance that covers Permian’s directors, officers, employees and agents for certain liabilities.

### **MRC Rockies Company**

The certificate of formation (the “Rockies Certificate”) of MRC Rockies Company (“Rockies”) provides that Rockies may indemnify its directors, officers, employees and agents, to the fullest extent permitted by applicable Texas law from any expenses, liabilities or other matters and may purchase and maintain liability, indemnification and/or other similar insurance as the board of directors shall deem necessary or appropriate in its sole discretion on behalf of Rockies’ directors, officers, employees and agents against expense, liability or loss asserted or incurred by them in their capacities as directors, officers, employees and agents.

Matador has obtained directors’ and officers’ insurance that covers Rockies’ directors, officers, employees and agents for certain liabilities.



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### Item 16. Exhibits. †

<u>Exhibit Number</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, by and among Matador Resources Company (now known as MRC Energy Company), Matador Holdco, Inc. (now known as Matador Resources Company) and Matador Merger Co., dated August 8, 2011 (incorporated by reference to Exhibit 2.1 to the Company's Registration Statement on Form S-1 filed on August 12, 2011).
3.1	Certificate of Merger between Matador Resources Company (now known as MRC Energy Company) and Matador Merger Co. (incorporated by reference to Exhibit 3.4 to the Company's Registration Statement on Form S-1 filed on August 12, 2011).
3.2	Amended and Restated Certificate of Formation of Matador Resources Company (formerly known as Matador Holdco, Inc.) (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on February 13, 2012).
3.3	Amended and Restated Bylaws of Matador Resources Company (formerly known as Matador Holdco, Inc.) (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on February 13, 2012).
3.4*	Certificate of Formation of Longwood Gathering and Disposal Systems, LP.
3.5*	Limited Partnership Agreement of Longwood Gathering and Disposal Systems, LP.
3.6*	Certificate of Formation of Longwood Gathering and Disposal Systems GP, Inc. (formerly known as Longwood Gathering and Disposal Systems, Inc.)
3.7*	Certificate of Amendment to Certificate of Formation of Longwood Gathering and Disposal Systems GP, Inc. (formerly known as Longwood Gathering and Disposal Systems, Inc.)
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3.10*	Amended and Restated Bylaws of Matador Production Company.
3.11*	Second Amended and Restated Certificate of Formation of MRC Energy Company (formerly known as Matador Resources Company).
3.12*	Second Amended and Restated Bylaws of MRC Energy Company (formerly known as Matador Resources Company).
3.13*	Certificate of Formation of MRC Permian Company (formerly known as MRC Drilling Company).
3.14*	Certificate of Merger of Ranchito Operating Co., Inc. with and into MRC Permian Company (formerly known as MRC Drilling Company).
3.15*	Bylaws of MRC Permian Company.
3.16*	Certificate of Formation of MRC Rockies Company.
3.17*	Bylaws of MRC Rockies Company.
4.1	Description of Common Stock (incorporated by reference to the Company's Form 8-A filed on January 27, 2012 (Registration No. 333-176263)).
4.2*	Form of Indenture with respect to Senior Debt Securities.
4.3*	Form of Indenture with respect to Subordinated Debt Securities.

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5.1*	Opinion of Haynes and Boone, LLP.
12.1*	Statements of Computation of Ratio of Earnings to Fixed Charges.
23.1*	Consent of Grant Thornton LLP.
23.2*	Consent of Netherland, Sewell & Associates, Inc.
23.3*	Consent of Haynes and Boone, LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (included as part of the signature page hereof).

\* Filed herewith.

† Matador will file as an exhibit to a Current Report on Form 8-K (i) any underwriting, remarketing or agency agreement relating to the securities offered hereby, (ii) the instruments setting forth the terms of any debt securities, guarantees, preferred stock or warrants, (iii) any additional required opinions of counsel with respect to legality of the securities offered hereby and (iv) any required opinion of counsel to Matador as to certain tax matters relative to the securities offered hereby and Matador will file any Statement of Eligibility and Qualification under the Trust Indenture Act of 1939 of the applicable trustee in accordance with the requirements of Section 305(b)(2) of the Trust Indenture Act of 1939 and Rule 5b-3 thereunder.

### **Item 17. Undertakings**

The undersigned registrant hereby undertakes:

- (a) (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

*provided, however*, that the undertakings set forth in paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:
  - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
  - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

- (5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant

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has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee under an Indenture to act under subsection (a) of Section 310 of the Trust Indenture Act of 1939 (the "Act") in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.

**SIGNATURES AND POWER OF ATTORNEY**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on April 9, 2013.

**MATADOR RESOURCES COMPANY**

By: /s/ Joseph Wm. Foran  
Joseph Wm. Foran  
Chairman, President and Chief Executive Officer

In accordance with the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the Company in the capacities and on the dates indicated.

Each person whose signature appears below appoints Joseph Wm. Foran and David E. Lancaster, and each of them, either of whom may act without the joinder of the other, as his or her true and lawful agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and any registration statement (including any amendment thereto) for this offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or would do in person, hereby ratifying and confirming all that said agents or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Joseph Wm. Foran</u> Joseph Wm. Foran	Chairman, President and Chief Executive Officer (Principal Executive Officer)	April 9, 2013
<u>/s/ David E. Lancaster</u> David E. Lancaster	Executive Vice President, Chief Operating Officer and Chief Financial Officer (Principal Financial Officer)	April 9, 2013
<u>/s/ Kathryn L. Wayne</u> Kathryn L. Wayne	Controller and Treasurer (Principal Accounting Officer)	April 9, 2013
<u>/s/ Stephen A. Holditch</u> Stephen A. Holditch	Director	April 9, 2013
<u>/s/ David M. Laney</u> David M. Laney	Director	April 9, 2013
<u>/s/ Gregory E. Mitchell</u> Gregory E. Mitchell	Director	April 9, 2013

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<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Steven W. Ohnimus</u> Steven W. Ohnimus	Director	April 9, 2013
<u>/s/ Michael C. Ryan</u> Michael C. Ryan	Director	April 9, 2013
<u>/s/ Margaret B. Shannon</u> Margaret B. Shannon	Director	April 9, 2013

**SIGNATURES AND POWER OF ATTORNEY**

Pursuant to the requirements of the Securities Act of 1933, each of the following co-registrants have duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on April 9, 2013.

**LONGWOOD GATHERING AND DISPOSAL SYSTEMS  
GP, INC.  
MATADOR PRODUCTION COMPANY  
MRC ENERGY COMPANY  
MRC PERMIAN COMPANY  
MRC ROCKIES COMPANY**

By: /s/ Joseph Wm. Foran  
Joseph Wm. Foran  
Sole Director, President and Chief Executive Officer

In accordance with the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the co-registrant in the capacities and on the dates indicated.

Each person whose signature appears below appoints Joseph Wm. Foran and David E. Lancaster, and each of them, any of whom may act without the joinder of the other, as his or her true and lawful agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and any registration statement (including any amendment thereto) for this offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or would do in person, hereby ratifying and confirming all that said agents or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Joseph Wm. Foran</u> Joseph Wm. Foran	Sole Director, President and Chief Executive Officer (Principal Executive Officer)	April 9, 2013
<u>/s/ David E. Lancaster</u> David E. Lancaster	Executive Vice President, Chief Operating Officer and Chief Financial Officer (Principal Financial Officer)	April 9, 2013
<u>/s/ Kathryn L. Wayne</u> Kathryn L. Wayne	Controller and Treasurer (Principal Accounting Officer)	April 9, 2013

**SIGNATURES AND POWER OF ATTORNEY**

Pursuant to the requirements of the Securities Act of 1933, the following co-registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, State of Texas, on April 9, 2013.

**LONGWOOD GATHERING AND DISPOSAL SYSTEMS,  
LP**

By: Longwood Gathering and Disposal Systems GP, Inc.,  
as general partner

By: /s/ Joseph Wm. Foran  
Joseph Wm. Foran  
Sole Director, President and Chief Executive Officer

In accordance with the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the co-registrant in the capacities and on the dates indicated.

Each person whose signature appears below appoints Joseph Wm. Foran and David E. Lancaster, and each of them, any of whom may act without the joinder of the other, as his or her true and lawful agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and any registration statement (including any amendment thereto) for this offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said agents full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or would do in person, hereby ratifying and confirming all that said agents or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Joseph Wm. Foran</u> Joseph Wm. Foran	Sole Director, President and Chief Executive Officer (Principal Executive Officer)	April 9, 2013
<u>/s/ David E. Lancaster</u> David E. Lancaster	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	April 9, 2013
<u>/s/ Kathryn L. Wayne</u> Kathryn L. Wayne	Controller and Treasurer (Principal Accounting Officer)	April 9, 2013



**EXHIBIT INDEX †**

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† Matador will file as an exhibit to a Current Report on Form 8-K (i) any underwriting, remarketing or agency agreement relating to the securities offered hereby, (ii) the instruments setting forth the terms of any debt securities, guarantees, preferred stock or warrants, (iii) any additional required opinions of counsel with respect to legality of the securities offered hereby and (iv) any required opinion of counsel to Matador as to certain tax matters relative to the securities offered hereby and Matador will file any Statement of Eligibility and Qualification under the Trust Indenture Act of 1939 of the applicable trustee in accordance with the requirements of Section 305(b)(2) of the Trust Indenture Act of 1939 and Rule 5b-3 thereunder.

**CERTIFICATE OF FORMATION  
OF  
LONGWOOD GATHERING AND DISPOSAL SYSTEMS, LP**

The undersigned, Longwood Gathering and Disposal Systems GP, Inc., a Texas corporation (the "*General Partner*"), desiring to form a Limited Partnership (the "*Partnership*"), pursuant to the Texas Business Organizations Code (the "*Code*"), hereby duly executes this Certificate of Formation (this "*Certificate*"), to be effective as of the date of filing.

1. The filing entity being formed is a limited partnership and the name of the entity is Longwood Gathering and Disposal Systems, LP.
2. The address of the registered office of the Partnership is 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240 and the name of the registered agent for service of process whose business office address will be the same as the registered office address is Joseph Wm. Foran.
3. The address of the principal office of the Partnership in the United States where its partnership records are to be kept or made available under Section 153.551 of the Code is 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240.
4. The name, the mailing address, and the street address of the business or residence of the General Partner of the Partnership is as follows:

<u>NAME</u>	<u>MAILING AND STREET ADDRESS</u>
Longwood Gathering and Disposal Systems GP, Inc. (f/k/a Longwood Gathering and Disposal Systems, Inc.)	5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240

5. By its execution of this Certificate of Formation, the General Partner hereby consents to the use of the name "Longwood Gathering and Disposal Systems, LP" by the Partnership.

EXECUTED the 25<sup>th</sup> day of September, 2006.

GENERAL PARTNER

Longwood Gathering and Disposal Systems GP, Inc.

By: /s/ Joseph Wm. Foran  
Joseph Wm. Foran  
President

**LONGWOOD GATHERING AND DISPOSAL SYSTEMS, LP**

**(A Texas Limited Partnership)**

**LIMITED PARTNERSHIP AGREEMENT**

*THE LIMITED PARTNER INTERESTS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR OTHER APPLICABLE SECURITIES LAWS, AND THEY MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED, ASSIGNED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH APPLICABLE SECURITIES LAWS AND THE RESTRICTIONS ON TRANSFER SET FORTH IN THIS AGREEMENT.*

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**AGREEMENT OF LIMITED PARTNERSHIP  
OF  
LONGWOOD GATHERING AND DISPOSAL SYSTEMS, LP**

This Agreement of Limited Partnership (this “**Agreement**”) of Longwood Gathering and Disposal Systems, LP, a Texas limited partnership (the “**Partnership**”), is entered into as of the 31<sup>st</sup> day of August, 2006, among Longwood Gathering and Disposal Systems, Inc., a Texas corporation (the “**General Partner**”), and the Persons designated as Limited Partners on the signature page hereof. The General Partner shall take all necessary action to effect a change in its name to “Longwood Gathering and Disposal System GP, Inc.” to enable the Partnership to file its certificate of formation as a limited partnership with the Texas Secretary of State.

The parties to this Agreement, in consideration of their mutual agreements and other good and valuable consideration, agree as follows:

**ARTICLE I**

**DEFINITIONS**

Unless otherwise clearly required by the context, for purposes of this Agreement:

“**Act**” means the Texas Limited Partnership Law, as embodied in the Texas Business Organizations Code and any successor act, as same may be amended from time to time.

“**Adjusted Capital Account**” means, as of the end of each Fiscal Year, the balance in a Partner’s Capital Account (a) increased by (i) any additional Capital Contributions the Partner is, or pursuant to Treasury Regulations § 1.704-1(b)(2)(ii)(c) is treated as, unconditionally obligated to make, (ii) the amount of the Partner’s share of any “partnership minimum gain” (as defined in Treasury Regulations § 1.704-2(d)), and (iii) the amount of the Partner’s share of any “partner nonrecourse debt minimum gain” (as defined in Treasury Regulations § 1.704-2(i)(2)), and (b) decreased by any adjustments, allocations or distributions described in Treasury Regulations §§ 1.704-1(b)(2)(ii)(d)(4), (5) and (6). This definition shall be interpreted and applied consistently with Treasury Regulations § 1.704-1(b)(2)(ii)(d).

“**Affiliate**” means, with respect to a referenced Person, (a) any Person directly or indirectly owning, Controlling or holding with power to vote 10% or more of the outstanding voting interests of the referenced Person, (b) any Person 10% or more of whose outstanding voting interests are directly or indirectly owned, Controlled or held with power to vote by the referenced Person, (c) any Person directly or indirectly Controlling, Controlled by or under common Control with the referenced Person, and (d) any officer, director, manager or general partner of the referenced person or of any other Person referred to in clauses (a), (b) or (c) above.

“**Agreement**” has the meaning specified in the preamble, and includes all Schedules, Exhibits or Annexes referenced herein and attached hereto.

“**Available Cash From Operations**” means, as of a specified time, the amount of cash and cash equivalents, determined in accordance with GAAP, held by or for the Partnership in excess of amounts required, in the opinion of the General Partner, for (i) payment of Partnership liabilities in accordance with their terms, and (ii) Partnership reserves for working capital deficits, maintenance and repair of the Pipeline Assets, capital expenditures with respect to the Pipeline Assets and contingent and unforeseen liabilities of the Partnership.



**“Bankruptcy”** or **“Bankrupt”** means, with respect to a Person, (a) the making by the Person of a general assignment for the benefit of the Person’s creditors, the filing by the Person of any application or petition for the appointment of a trustee or receiver over the Person or any substantial part of the Person’s assets, or the commencement by the Person of any proceeding under any bankruptcy or reorganization statute or under any insolvency, dissolution or liquidation law; (b) the filing against the Person of any such application or petition, or the commencement of any such proceeding, that is not dismissed within ninety (90) days after the date of its filing or commencement; (c) the entry of an order for relief with respect to the Person in any bankruptcy or insolvency proceeding; (d) the Person’s written admission that it is unable to pay its debts as they become due; or (e) the entry of a charging order with respect to the Person’s Interest or the seizure or forced sale of all or part of the Person’s Interest by a creditor of the Person if not released or bonded out within thirty (30) days after the Person’s receipt of notice thereof.

**“Book Basis”** means, with respect to each Partnership asset, the asset’s adjusted basis for federal income tax purposes, except that: (a) the initial Book Basis of any asset contributed to the Partnership by a Partner shall be the asset’s value, as agreed among the Partners, on the date of contribution, (b) effective immediately before any Revaluation Event, the Book Basis of each Partnership asset (including any intangible asset) shall be adjusted to equal its then fair market value (as determined by the General Partner), (c) if the adjusted basis for federal income tax purposes of any Partnership asset is adjusted as a result of an election under Code § 754 to adjust the basis of Partnership assets in accordance with the provisions of Code §§ 734(b) or 743(b), the asset’s Book Basis shall be adjusted to the extent required by Treasury Regulations § 1.704-1(b)(2)(iv)(m), and (d) the Book Basis of any Partnership asset described in clause (a), (b) or (c) of this definition shall thereafter be reduced by cost recovery deductions computed in accordance with Treasury Regulations § 1.704-1(b)(2)(iv)(g)(3) in lieu of any depreciation, amortization or other cost recovery deductions otherwise allowable for federal income tax purposes.

**“Capital Account”** has the meaning specified in Section 3.1.

**“Capital Contributions”** means the amount of cash and the initial Book Basis of any other property contributed to the capital of the Partnership by a Partner or a Partner’s predecessors in interest.

**“Certificate”** means the certificate of formation for the Partnership filed with the Office of the Secretary of State of the State of Texas, as it may be amended and/or restated from time to time.

**“Code”** means the Internal Revenue Code of 1986, as amended (including corresponding provisions of succeeding law).

“**Control**,” “**Controlling**” and “**Controlled by**” mean the ability to direct or cause the direction of the management or affairs of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Distribution Percentage**” means the percentage set forth beside each Partner’s name on Schedule A under the heading “Distribution Percentages,” appropriately adjusted from time to time by the General Partner to reflect any changes in the Interests of the Partners after the effective date of this Agreement.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

“**Fiscal Year**” means the calendar year (unless otherwise required by the Code), including any portion thereof for which items of income, gain, loss and deduction of the Partnership, determined for federal income tax purposes, are required to be determined with respect to one or more Partners.

“**GAAP**” means generally accepted United States accounting principles, consistently applied.

“**General Partner**” means, in the capacity as such, the Person specified in the preamble as such and any Person hereafter admitted to the Partnership as a general partner in accordance with this Agreement, but does not include any Person who has ceased to be a general partner of the Partnership.

“**Income**” means, each item of Partnership income and gain, as determined, recognized and classified for federal income tax purposes, adjusted as follows: (a) items of income and gain exempt from federal income tax shall be included in Income, (b) upon the occurrence of a Revaluation Event, any excess of the fair market value immediately before the event (as determined by the General Partner) of each Partnership asset (including intangible assets) over the Book Basis of the asset immediately before the event shall be treated as an item of Income and shall be allocated to the Capital Accounts of the Partners, (c) immediately before any distribution by the Partnership of any Partnership asset other than cash, any excess of the fair market value (as determined by the General Partner) of the asset over its Book Basis shall be treated as an item of Income and shall be allocated to the Capital Accounts of the Partners, and (d) gain recognized upon a sale, exchange or other disposition of any Partnership asset whose Book Basis differs from its adjusted tax basis shall be computed by reference to the asset’s Book Basis.

“**Interest**” means all of a Partner’s interests in the Partnership, including rights to distributions, allocations, information and reports, and, subject to restrictions on admission as a Partner herein, to vote, consent, approve or otherwise participate in the management of the Partnership.

“**Limited Partner**” means, in the capacity as such, any Person designated as a Limited Partner on the signature page hereof, and any Person hereafter admitted to the Partnership as a Limited Partner in accordance with this Agreement, but does not include any Person who has ceased to be a Limited Partner.

**“Loss”** means each item of Partnership loss and deduction, as determined, recognized and classified for federal income tax purposes, adjusted as follows: (a) expenditures described in Code § 705(a)(2)(B) or treated as so described pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(i) shall be included in Loss, (b) upon the occurrence of a Revaluation Event, any excess of the Book Basis immediately before the event of each Partnership asset (including intangible assets) over the fair market value immediately before the event (as determined by the General Partner) of the asset shall be treated as an item of Loss and shall be allocated to the Capital Accounts of the Partners, (c) immediately before any distribution by the Partnership of any Partnership asset other than cash, any excess of the Book Basis of the asset over its fair market value (as determined by the General Partner) shall be treated as an item of Loss and shall be allocated to the Capital Accounts of the Partners, (d) loss recognized upon a sale, exchange or other disposition of any Partnership asset whose Book Basis differs from its adjusted tax basis shall be computed by reference to the asset’s Book Basis, and (e) when the Book Basis of any Partnership asset differs from its adjusted tax basis, cost recovery deductions with respect to the asset computed in accordance with Treasury Regulations § 1.704-1(b)(2)(iv)(g)(3) shall be included in Loss in lieu of any depreciation or other cost recovery deductions otherwise allowable for federal income tax purposes.

**“Majority Interest”** means Limited Partners holding more than fifty percent (50%) of the Distribution Percentages held by all Limited Partners.

**“Net Capital Proceeds”** means the excess, if any, of (a) Partnership funds (including principal and interest payments received in connection with the transaction) resulting from any transaction by the Partnership that pursuant to GAAP would be considered capital in nature, including (i) the proceeds of a sale, financing, refinancing or other similar transaction with respect to all or any portion of the Pipeline Assets, (ii) the proceeds of any condemnation award, title insurance claim or casualty loss insurance claim to the extent not utilized to replace or repair the damaged or taken asset or applied in alleviation of any title defect, and (iii) amounts released from any Partnership reserve to the extent that the reserve had been funded with Net Capital Proceeds; over (b) the sum of the (i) actual out of pocket costs and expenses incurred by the Partnership in connection with the transaction, (ii) the amount of such funds applied in satisfaction of Partnership liabilities, and (iii) the amount of such funds added, in the discretion of the General Partner, to any Partnership reserve.

**“Net Income”** and **“Net Loss”** mean, for each Fiscal Year, the positive or negative difference, respectively, between all items of Income and Loss, exclusive of items of Income and Loss specially allocated to a Partner pursuant to Section 4.2.

**“Partners”** means, as required by the context, any one or more of the General Partner and the Limited Partners.

**“Partnership”** means the partnership evidenced by this Agreement, which partnership is intended to be a limited partnership following filing of the Certificate.

**“Person”** means any natural person, unincorporated organization or association, governmental agency or instrumentality, estate, trust, nominee, custodian, receiver or corporation, partnership, limited liability company or other entity.

“**Pipeline Assets**” means all (i) pipelines owned and/or operated by the Partnership for the gathering, transmission, or distribution of hydrocarbons; (ii) salt water disposal wells, pipelines and related facilities; and (iii) all real and personal property associated with any of the foregoing.

“**Plan of Merger**” has the meaning specified in Section 14.8.

“**Regulatory Allocations**” has the meaning specified in Section 4.2(i).

“**Revaluation Event**” means (unless otherwise determined by the General Partner) the occurrence of any of the following: (a) the acquisition of an additional Interest by any new or existing Partner in exchange for more than a de minimis Capital Contribution, (b) a distribution by the Partnership of more than a de minimis amount of money or property in consideration for an Interest, or (c) the “liquidation” of the Partnership within the meaning of Treasury Regulations § 1.704-1(b)(2)(ii)(g) (other than a deemed liquidation resulting from a termination under Treasury Regulations § 1.708-1(b)(1)(ii)).

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Transfer**,” “**Transferred**” or “**Transferring**” means a voluntary or involuntary (including by will or intestate succession) sale, exchange, assignment, mortgage, pledge, grant of a security interest or other disposition or encumbrance of an Interest, or the act thereof.

“**Treasury Regulations**” means temporary and final regulations promulgated under the Code by the United States Department of the Treasury (including corresponding provisions of succeeding regulations).

“**Unreturned Capital Contributions**” means any excess of a Partner’s aggregate Capital Contributions over the aggregate distributions made to the Partner pursuant to Sections 5.1(b), 5.2(b) and 5.2(c).

Certain other terms may be defined elsewhere in this Agreement for purposes of the particular Article or Section in which they are used.

## ARTICLE II

### ORGANIZATION

**2.1. Formation.** The Partners hereby form the Partnership pursuant to this Agreement and the Act. The General Partner shall file the Certificate with the Office of the Secretary of State of Texas as soon as reasonably practicable.

**2.2. Term.** The Partnership shall commence upon the execution of this Agreement by the Partners and shall continue until December 31, 2056, unless earlier wound up pursuant to Article X.

**2.3. Name.** The name of the Partnership is Longwood Gathering and Disposal Systems, LP. All Partnership business shall be conducted in that name or any other name selected by the General Partner, the use of which complies with applicable law.

**2.4. Offices and Registered Agent.** The address of the initial registered office of the Partnership in the State of Texas is 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240, and the name of the initial registered agent of the Partnership at that address is Joseph Wm. Foran. The principal office of the Partnership in the United States shall be at such place as the General Partner may designate from time to time, which need not be in the State of Texas, and the Partnership shall maintain records there as required by Sections 3.151 and 153.551 of the Act. The General Partner shall give written notice to each Limited Partner of any change in the Partnership's registered agent or registered or principal office.

**2.5. Purposes.** The purposes of the Partnership are to (a) carry on any lawful business, purpose or activity for which limited partnerships may be organized under the Act and (b) any other activities necessary, appropriate, incidental or related to any of the foregoing.

**2.6. Filings.** The General Partner shall effect a change in its name and shall execute and file the Certificate in accordance with the Act as soon as reasonably practicable and take any and all other actions necessary or appropriate to qualify the Partnership as a limited partnership under the laws of any jurisdiction in which the conduct of its business or the ownership of its assets require it to so qualify, including pursuant to any applicable assumed, trade or fictitious name statute.

**2.7. Partnership Property.** Unless otherwise agreed in writing by the General Partner, title to all Partnership property shall be held solely in the name of the Partnership. Each Partner irrevocably waives any right to maintain an action for partition of any of the Partnership's property.

### ARTICLE III

#### CAPITAL ACCOUNTS; CONTRIBUTIONS

**3.1. Capital Accounts.** A separate capital account ("*Capital Account*") shall be maintained for each Partner in accordance with this Section 3.1.

(a) Each Partner's Capital Account (a) shall be increased by (i) its Capital Contributions, (ii) the amount of any Partnership liabilities assumed by the Partner or secured by Partnership property distributed to the Partner, and (iii) allocations to the Partner pursuant to this Agreement of Net Income and items of Income; and (b) shall be decreased by (i) the amount of cash and the fair market value (as determined by the General Partner or, if applicable, liquidator) of any other Partnership property distributed to the Partner, (ii) the amount of any liabilities of the Partner assumed by the Partnership or secured by property of the Partner contributed to the Partnership, and (iii) allocations to the Partner pursuant to this Agreement of Net Loss and items of Loss.

(b) Each Partner shall have a single Capital Account that reflects all of its Interests. A permitted transferee of all or part of an Interest shall succeed to the balance of the transferor's Capital Account to the extent attributable to the Interest transferred.

(c) Code § 752(c) and other applicable provisions of the Code and Treasury Regulations shall be taken into account in determining the amount of any liability for purposes of determining the Capital Accounts of the Partners.

(d) This Section 3.1 and the other provisions of this Agreement relating to the maintenance of the Partners' Capital Accounts shall be interpreted and applied consistently with the provisions of Treasury Regulations § 1.704-1(b). The General Partner may modify the manner in which Net Income, Net Loss, and items of Income and Loss are allocated to the Partners' Capital Accounts pursuant to this Agreement to the extent necessary or appropriate to comply with Treasury Regulations § 1.704-1(b), or to reflect unanticipated events, provided that the modification is not reasonably expected to materially effect amounts distributable to any Partner pursuant to Section 11.1(c)(iii).

**3.2. Initial Capital Contributions.** Each Partner shall make the initial Capital Contribution set forth beside its name on Schedule A.

**3.3. Additional Capital Contributions.** Subject to the approval of the General Partner, any Limited Partner may make additional Capital Contributions to the Partnership in the form of cash or other property, *provided, however*, that no Partner shall be required to make additional Capital Contributions.

**3.4. Partner Loans.** Any Partner or Affiliate of a Partner may, with the consent of the General Partner, loan funds to the Partnership from time to time; provided that any such loans shall be made only on commercially reasonable terms (as determined in good faith by the General Partner).

**3.5. Priority.** Except as otherwise specifically provided in this Agreement, no Partner shall be entitled to (a) receive any return of or on its Capital Contributions or Capital Account, (b) receive any distribution in a medium other than cash, or (c) priority over any other Partner as to Partnership distributions or allocations of Net Income, Net Loss or items of Income or Loss.

## ARTICLE IV

### ALLOCATIONS

**4.1. Allocations of Net Income or Net Loss.** After first giving effect to the special allocations set forth in Section 4.2, Net Income or Net Loss for each Fiscal Year shall be allocated to the Partners in accordance with their respective Distribution Percentages.

**4.2. Special Allocations of Items of Income and Loss.** Before giving effect to allocations of Net Income or Net Loss pursuant to Section 4.1, the following items of Partnership Income and Loss shall be specially allocated to the Partners as follows and in the following order of priority:

(a) If there is a net decrease in “partnership minimum gain” (as defined in Treasury Regulations § 1.704-2(d)), items of income and gain (determined in accordance with Treasury Regulations § 1.704-2(f)(6)) shall, to the extent required by the Treasury Regulations, be specially allocated to the Partners in an amount equal to each Partner’s share of the net decrease in partnership minimum gain (determined in accordance with Treasury Regulations § 1.704-2(g)). This Section 4.2(a) shall be applied consistently with, and subject to the exceptions contained in, the minimum gain chargeback requirements of Treasury Regulations § 1.704-2(f).

(b) If there is a net decrease in “partner nonrecourse debt minimum gain” (as defined in Treasury Regulations § 1.704-2(i)(2)), items of income and gain (determined in accordance with the provisions of Treasury Regulations § 1.704-2(i)(4)) shall, to the extent required by the Treasury Regulations, be specially allocated to the Partners in an amount equal to each Partner’s share of the net decrease in partner nonrecourse debt minimum gain (determined in accordance with the provisions of Treasury Regulations § 1.704-2(i)(5)). This Section 4.2(b) shall be applied consistently with, and subject to the exceptions contained in, the partner nonrecourse debt minimum gain chargeback requirements of Treasury Regulations § 1.704-2(i)(4).

(c) If a Partner unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations §§ 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be specially allocated to the Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balance in the Partner’s Adjusted Capital Account as quickly as possible, provided that an allocation pursuant to this Section 4.2(c) shall be made only to the extent that the Partner has a deficit balance in its Adjusted Capital Account after all other allocations provided for in this Article IV have been tentatively made as if this Section 4.2(c) were not in this Agreement. This Section 4.2(c) shall be interpreted consistently with Treasury Regulations § 1.704-1(b)(2)(ii)(d).

(d) If a Partner has a deficit balance in its Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) any amount it is obligated to restore pursuant to this Agreement and (ii) any amount the Partner is treated as obligated to restore pursuant to the penultimate sentences of Treasury Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5), items of income and gain in the amount of such excess shall be specially allocated to the Partner as quickly as possible, provided that an allocation pursuant to this Section 4.2(d) shall be made only to the extent that the Partner has a deficit balance in its Capital Account in excess of such amount after all other allocations provided for in this Article IV have been tentatively made as if Section 4.2(c) and this Section 4.2(d) were not in this Agreement.

(e) “Nonrecourse deductions” (as defined in Treasury Regulations § 1.704-2(c)) shall be specially allocated to the Partners in accordance with their respective Distribution Percentages.

(f) “Partner nonrecourse deductions” (as defined in Treasury Regulations § 1.704-2(i)(2)) shall be specially allocated to the Partners who bear the economic risk of loss for the liability to which those deductions are attributable, determined in accordance with the principles of Treasury Regulations § 1.704-2(i)(1).

(g) To the extent an adjustment to the adjusted tax basis of any Partnership asset under Code §§ 734(b) or 743(b) is required to be taken into account in determining Capital Accounts under Treasury Regulations § 1.704-1(b)(2)(iv)(m), the amount of the Capital Account adjustment shall be treated as an item of Income (if positive) or Loss (if negative) and shall be specially allocated to the Partners consistent with the manner in which their Capital Accounts are required to be adjusted by such Treasury Regulation.

(h) To the extent any allocation of Net Loss would cause or increase a deficit balance in a Limited Partner's Adjusted Capital Account as of the end of the Fiscal Year for which the allocation is being made, the amount thereof shall instead be allocated to the General Partner.

(i) To minimize any distortions in the manner that the Partners would have shared distributions if the special allocations required by Sections 4.2(a)-(h) (the "**Regulatory Allocations**") had not been part of this Agreement, the General Partner may specially allocate to the Partners offsetting items of Income or Loss so that the net amounts allocated to each Partner pursuant to Sections 4.1 and 4.2 (including specifically, Section 4.2(h)) will, to the extent reasonably possible, equal the net amounts that would have been allocated to each Partner pursuant to Section 4.1 if the Regulatory Allocations had never occurred. In exercising its authority hereunder, the General Partner shall consider any expected future Regulatory Allocations which are likely to offset other Regulatory Allocations previously made.

#### **4.3. Other Allocation Rules.**

(a) To reflect the varying Interests of the Partners during any Fiscal Year, Net Income or Net Loss and items of Income and Loss shall be determined by the General Partner on a daily, monthly or other basis using any convention or method permitted under Code § 706 and the Treasury Regulations thereunder, provided that gain or loss arising from the sale or other disposition of any Partnership asset shall be allocated to the Persons who were Partners on the date of the sale or other disposition.

(b) Excess nonrecourse liabilities of the Partnership (as defined in Treasury Regulations § 1.752-3(a)(3)) shall be shared among the Partners in accordance with their respective Distribution Percentages.

#### **4.4. Allocations of Taxable Income or Loss.**

(a) Except as provided in Section 4.4(b), for each Fiscal Year, items of income, gain, loss and deduction of the Partnership, determined solely for federal income tax purposes, shall be allocated to the Partners in the same manner as each correlative item of Income or Loss and Net Income or Net Loss is allocated to the Partners pursuant to Sections 4.1, 4.2 and 4.3.

(b) In accordance with § 704(c) of the Code and the Treasury Regulations thereunder, solely for federal income tax purposes, items of taxable income, gain, loss and deduction with respect to any Partnership asset having a Book Basis that differs from its adjusted basis for federal income tax purposes shall be allocated among the Partners in a manner that takes into account the amount of such difference at the time it arose. Such allocations shall be made pursuant to any method selected by the General Partner and permitted by Treasury Regulations § 1.704-3.



(c) Allocations pursuant to this Section 4.4 are solely for federal, state and local income tax purposes and shall not affect the Partners' Capital Accounts.

**4.5. Economic Terms to Prevail.** The provisions contained in this Article IV are included to reflect the intentions of the Partners to maintain compliance with the Act and the Code. In the event the allocation provisions of this Article IV are inconsistent with the economic terms set forth herein, then it is agreed that the economic terms shall control.

## ARTICLE V

### DISTRIBUTIONS

**5.1. Available Cash from Operations.** Except as provided in Section 11.1(c), Available Cash from Operations may be distributed to the Partners at such time or times as the General Partner in its sole discretion may determine, in the following order of priority:

- (a) First, in repayment of any loans to the Partnership described in Section 3.4; and
- (b) Second, to the Partners in proportion to their respective Distribution Percentages, as applicable.

**5.2. Distributions of Net Capital Proceeds.** Except as provided in Section 11.1(c), Net Capital Proceeds may be distributed to the Partners at such time or times as the General Partner in its sole discretion may determine, in the following order of priority:

- (a) First, in repayment of any loans to the Partnership described in Section 3.4;
- (b) Second, to the General Partner and the Limited Partners in proportion to and to the extent of their Unreturned Capital Contributions; and
- (c) Third, to the Partners in proportion to their respective Distribution Percentages, as applicable.

**5.3. Withholding.** Notwithstanding any provision of this Agreement to the contrary, the General Partner may withhold and remit to the applicable taxing authority all amounts required by any local, state, federal or foreign law to be withheld and remitted by the Partnership with respect to a Partner on account of dispositions of Partnership property, distributions to a Partner or allocations to a Partner of items of Partnership taxable income, gain, loss, deduction or credit. Each Partner shall timely provide to the General Partner all information, forms and certifications necessary or appropriate to enable the General Partner and the Partnership to comply with any such withholding obligation and represents and warrants to the Partnership and the General Partner that the information, forms and certifications furnished by it shall be true and correct at the time so furnished. Each Partner shall, upon demand, indemnify the Partnership for any amounts so withheld and remitted by the Partnership in respect of the Partner from sources other than current distributions to the Partner, together with any related costs, expenses, interest, penalties, additional amounts and additions to tax incurred by the Partnership.

## ARTICLE VI

### TRANSFERS; ADDITIONAL INTERESTS

**6.1. Transfers Prohibited.** Except as otherwise provided in this Article, no Partner shall Transfer all or any part of its Interest. A Transfer made in contravention of this Article shall not be recognized by the Partnership. Any Person making or attempting to make a Transfer in contravention of this Article shall indemnify and hold harmless the Partnership and the other Partners from all losses, costs, expenses, damages and liabilities (including professional fees) incurred in connection with the Transfer or attempted Transfer.

#### **6.2. Permitted Transfers.**

(a) A Limited Partner may Transfer all or part of its Interest as a Limited Partner only (i) to the General Partner or a Person (including the Partnership) designated by the General Partner, (ii) to any successor to the business or assets of the Limited Partner; (iii) to an Affiliate of the Limited Partner; or (iv) pursuant to a Transfer approved by the General Partner in its sole and absolute discretion.

(b) The General Partner may Transfer all or part of its Interest as General Partner only (i) to an Affiliate of the General Partner, (ii) to any successor to the business or assets of the General Partner, or (iii) pursuant to a Transfer approved by a Majority Interest. Upon a Transfer permitted by this Section 6.2(b), unless otherwise specified in the instruments evidencing the Transfer, the transferee shall automatically become a substituted or additional General Partner without the requirement of any action on the part of the Limited Partners. If there is ever more than one General Partner, they shall, unless otherwise agreed among them, act unanimously.

**6.3. Other Conditions.** Notwithstanding Section 6.2, a Transfer of a Limited Partner's Interest shall not be permitted or recognized, and no transferee thereof shall be admitted as a substituted Limited Partner pursuant to Section 6.5, until each of the following conditions has been satisfied or, in the sole discretion of the General Partner, waived:

(a) the offer and Transfer of the Interest shall have been registered or qualified under the Securities Act, and any applicable state, local or foreign securities laws, or the General Partner shall have been provided a written opinion, satisfactory in content to the General Partner from counsel satisfactory to the General Partner, to the effect that the offer and Transfer of the Interest is exempt from such requirements;

(b) the Transfer shall not (i) impair the ability of the Partnership to continue to be classified as a partnership under the Code, (ii) result in a termination of the Partnership under § 708(b)(1)(B) of the Code (unless the General Partner determines that such would not have a material adverse effect on any Limited Partner), (iii) cause or be likely to cause the Partnership to be subject to taxation as a "publicly traded partnership" within the meaning of Code § 7704(a)

and the Treasury Regulations thereunder, (iv) cause the Partnership to be in material breach or default under any instrument or agreement to which it is bound, (v) cause the Partnership to be in material violation of any federal, state, local or foreign non-securities law to which it is subject, or (vi) cause the Partnership to forfeit any material right, privilege, franchise, license, permit or similar right; and

(c) the General Partner shall have received, in form and content reasonably satisfactory to it (i) a true and complete copy of the instruments or documents effecting or evidencing the transfer, (ii) the written agreement of the transferee agreeing to be bound by this Agreement, setting forth the notice address of the transferee and containing such other representations, warranties, terms and conditions as the General Partner may require, (iii) the transferee's taxpayer identification number and all other information required by the Partnership to comply with any provision of the Code and Treasury Regulations, and (iv) reimbursement of all costs and expenses incurred by the Partnership in connection with the transfer or admission.

**6.4. Recognition of Transfers.** Notwithstanding any other provision of this Article VI, the Partnership shall not be obligated to recognize a Transfer until the transferor has given written notice thereof to the General Partner and the General Partner has recognized the transferee as the record holder of the Interest. For purposes of making distributions and allocations, and determining the Partners entitled to vote or consent with respect to a matter, the Partnership shall recognize a Transfer made in accordance with this Article VI no later than the end of the calendar month during which it receives notice of the transfer and all conditions to the Transfer set forth in Section 6.3 have been satisfied or waived. Until such time, all allocations and distributions shall be made to, and all votes and consents shall be had from, the Person that is reflected in the books and records of the Partnership as the record owner of the Interest.

**6.5. Substituted Limited Partners.** A transferee of a Limited Partner's Interest shall be entitled to be admitted to the Partnership as a Limited Partner only if (a) the right to such admission was assigned to the transferee, (b) the General Partner has consented to such admission, which consent may be given, withheld or conditioned in the sole discretion of the General Partner, for any reason or no reason, (c) the Transfer was permitted by the provisions of this Article VI, and (d) all of the conditions set forth in Section 6.3 have been satisfied or, in the sole discretion of the General Partner, waived.

**6.6. Unadmitted Assignees.** Unless the transferee of an Interest has been admitted to the Partnership as a Partner in accordance with Sections 6.5 or 6.2(b), the rights of the holder with respect to the Interest shall be limited solely to the right to receive allocations and distributions pursuant to Article IV and Article V and Section 11.1(c)(iii), to the extent those rights were assigned to the holder, and the holder shall not be entitled to further Transfer such Interest except in compliance with the provisions of this Article VI. Without limiting any other legal or equitable remedies of the Partnership, any distributions otherwise payable to the holder of an Interest received in a Transfer not made in accordance with the provisions of this Article VI but which the Partnership is required by law to recognize may be applied to satisfy any debts or liabilities (including for damages) that the transferor or transferee of the Interest may owe to the Partnership.

**6.7. Death or Legal Incapacity.** Notwithstanding any other provision of this Article VI, upon the death or legal incapacity of a Limited Partner who is a natural Person, the Limited Partner's executor, administrator, guardian, conservator or other legal representative may exercise all of the Limited Partner's rights and powers for the sole purpose of settling the Limited Partner's estate or administering the Limited Partner's property.

**6.8. Additional Limited Partners.** Additional Limited Partner Interests (including options, warrants, convertible debt instruments and other rights to acquire such Interests) may be issued by the Partnership and additional Persons may be admitted to the Partnership as additional Limited Partners only on such terms and conditions as the General Partner has approved. The General Partner shall reflect the issuance of any such additional Interests in an amendment to this Agreement and, if required, the Certificate (each of which need be executed only by the General Partner) setting forth any changes to this Agreement necessary or appropriate to reflect the issuance of such additional Interests or the creation of additional classes of such Interests.

## ARTICLE VII

### POWERS, RIGHTS AND DUTIES OF THE GENERAL PARTNER

**7.1. Management of the Partnership.** Except when the action of the Limited Partners is expressly required by this Agreement or any nonvariable provision of the Act, the General Partner shall have full, complete and exclusive authority to manage the Partnership's business, affairs and properties and to make all decisions related thereto, including, in the name of or on behalf of the Partnership, to:

(a) open and maintain bank accounts, draw checks or other orders thereon, and designate Persons with authority to act in respect thereof;

(b) enter into, and exercise and perform all rights, duties and obligations of the Partnership under, all agreements, certifications, instruments and other documents necessary or appropriate in the management of the Partnership's affairs, including in connection with the acquisition, installation, financing, refinancing, improvement, repair, maintenance, leasing, licensing, disposition or encumbrance of all or any portion of the Pipeline Assets or other Partnership properties;

(c) enter into gas gathering agreements, gas marketing agreements, transportation agreements, management agreements, surface lease agreements, right-of-ways, servitudes and any other agreement the General Partner deems necessary or appropriate in connection with operating and maintaining existing Pipeline Assets or acquiring new Pipeline Assets;

(d) take any action and enter into any agreement the General Partner deems necessary or appropriate in connection with the drilling and maintenance of salt water disposal wells and the disposal of salt water into such wells;

(e) acquire, utilize, encumber or dispose of any personal property necessary or appropriate to the accomplishment of the purposes of the Partnership;

- (f) borrow funds for Partnership purposes and grant mortgages and other security interests in Partnership properties as security therefor;
- (g) engage engineers, architects, consultants, brokers, attorneys, accountants and other professionals on behalf of the Partnership;
- (h) purchase contracts of insurance insuring the Partners, the Partnership and the Partnership's properties, employees and agents against loss of any nature, including liability insurance covering the acts and omissions of the General Partner and its Affiliates with respect to the Partnership; and
- (i) enter into and perform all other agreements and undertakings as the General Partner may deem necessary, appropriate or incidental to the accomplishment of the Partnership's purposes.

**7.2. Restrictions on General Partner's Activities.** Notwithstanding Section 7.1, the General Partner shall not do any of the following:

- (a) cause or permit the Partnership to engage in any activity that is not consistent with the purposes of the Partnership;
- (b) possess Partnership assets, or assign rights in specific Partnership assets, for other than a Partnership purpose;
- (c) take any action that would subject any Limited Partner to liability as a general partner in any jurisdiction; or
- (d) cause the Partnership to enter into any agreement or take any other action for which the approval of the Limited Partners is required elsewhere in this Agreement.

**7.3. Certain Information.** The General Partner shall keep the Limited Partners informed of all material matters relating to the Pipeline Assets and the business of the Partnership, including any known or expected defaults under any loan to the Partnership. The General Partner will, upon request by a Limited Partner and at the Partnership's reasonable expense, provide the Limited Partners with copies of:

- (a) all material correspondence to or from any governmental authority relating to the Pipeline Assets;
- (b) all written offers for the purchase or other acquisition of all or any portion of the Pipeline Assets (whether in the form of a contract, letter of intent or otherwise); and
- (c) all other material documents and information with respect to the Partnership or the Pipeline Assets that a Limited Partner may reasonably request.

**7.4. Reliance by Third Parties.** Any Person dealing with the Partnership (other than a Partner) may rely conclusively upon the authority of the General Partner to take any action in the name of the Partnership without any obligation to inquire into the provisions of this Agreement.

**7.5. General Partner's Time.** The General Partner shall be required to devote only so much of its time to the Partnership as the Partnership's business and affairs reasonably require.

**7.6. Compensation and Fees; Expenses.** The Partnership shall pay or reimburse the General Partner and its Affiliates the costs of organizing the Partnership and all direct, out-of-pocket costs and expenses incurred by the General Partner and its Affiliates in connection with the conduct of the Partnership's business and affairs.

**7.7. Conflicting Interests.** The General Partner and its Affiliates may become affiliated in any way with any business or venture and engage in any activity they may choose, whether are not competitive with the Partnership's business and activities. The General Partner and its Affiliates are not required to offer any interest in any such business, venture or activity to the Partnership or any other Partner.

**7.8. Limitation of Liability of General Partner and Affiliates.** The General Partner or its Affiliates shall be liable for errors or omissions with respect to the Partnership's affairs only in the case of bad faith, gross negligence or willful misconduct. The General Partner and its Affiliates may consult with professional advisors selected with due care, and shall not be liable for any act or omission in good faith reliance thereon.

**7.9. Indemnification of General Partner and Affiliates.** To the fullest extent permitted by law, the Partnership shall indemnify and hold harmless the General Partner, its Affiliates and the respective officers, directors, managers, partners, members, employees and agents of each, from and against all losses, costs, liabilities, damages and expenses (including costs of suit and attorneys' fees) incurred by any of them in connection with the conduct of the Partnership's affairs or the performance of any of the General Partner's responsibilities (*SPECIFICALLY INCLUDING THE INDEMNITEE'S SOLE, PARTIAL OR CONCURRENT NEGLIGENCE AND UNDER THEORIES OF STRICT LIABILITY*), and the Partnership shall advance expenses associated with the defense of any related action. Notwithstanding the foregoing, (a) the Partnership shall not indemnify any Person in respect of any action or inaction constituting bad faith, gross negligence or willful misconduct, and (b) satisfaction of any obligation of the Partnership pursuant to this Section 7.9 shall be from and limited to Partnership assets.

## ARTICLE VIII

### POWERS, RIGHTS AND DUTIES OF LIMITED PARTNERS

**8.1. Limitation of Liability of Limited Partners.** A Limited Partner in its capacity as such shall not be personally liable for the obligations and liabilities of the Partnership beyond the amount of its required Capital Contributions; provided that if a Limited Partner receives a distribution prohibited by Section 153.210 of the Act and the Limited Partner knew that the distribution was so prohibited, the Limited Partner shall be liable for the return of the distribution to the Partnership.

**8.2. Participation in Management.** Except as otherwise specifically provided in this Agreement, a Limited Partner shall not participate in the operation, management or control of the business of the Partnership, transact any business in the name of the Partnership or bind the Partnership in any manner.

**8.3. Action of the Limited Partners; Meetings.**

(a) Except as otherwise specifically provided by this Agreement or any nonvariable provision of the Act, the action of the Limited Partners, whether by written consent or at a meeting of the Partners, shall be had by the action of a Majority Interest.

(b) Meetings of the Limited Partners to vote upon any matters on which the Limited Partners are authorized to take action under this Agreement or as the same may be amended from time to time may be called at any time by the General Partner or by a Majority Interest by delivering written notice, either in person or by certified mail, of such call to the General Partner. Within ten (10) days following receipt of such request, the General Partner shall cause a written notice to be given, either in person or by certified mail, to the Limited Partners entitled to vote advising them that a meeting, convenient to the Limited Partners, will be held at a time and place fixed by the General Partner. Such meeting will be held not less than ten (10) days nor more than sixty (60) days after the mailing of the notice of the meeting. Included with the notice of the meeting shall be a detailed statement of the action proposed, including a verbatim statement of the wording of any resolution proposed for adoption by the Limited Partners and of any proposed amendments to this Partnership Agreement, as the same may from time to time be amended. Meetings may be held at any time during normal business hours at the principal office of the Partnership or the General Partner, or such other place as may have been approved by a Majority Interest or may be conducted by means of telephone conference or similar communications equipment whereby all persons participating in the meeting can hear and speak to each other. A quorum shall not be required as a prerequisite to the conduct of any meeting of the Limited Partners. Limited Partners may waive notice of or attendance at the meeting and may vote in Person, by proxy, by written consent or by telephone or other communication device. Attendance at a meeting shall constitute waiver of notice of the meeting. A representative of the General Partner shall chair the meeting and shall conduct the meeting under such rules as he or she may reasonably determine.

**ARTICLE IX**

**BOOKS AND RECORDS; REPORTS; TAX MATTERS**

**9.1. Books and Records.** The General Partner shall cause separate books of account for the Partnership to be maintained that reflect a true and accurate record of the Partnership's assets and liabilities and all costs and expenses incurred, charges made, credits made and received and income derived in connection with the conduct of the Partnership's business and affairs. For purposes of determining Net Income, Net Loss, Income and Loss and otherwise maintaining the Partners' Capital Accounts, the books of account of the Partnership shall, except as otherwise provided in this Agreement, be maintained in accordance with federal income tax principles consistently applied and, in the General Partner's sole discretion, the cash (if permitted by the Code) or accrual method of accounting. Each Limited Partner, its designated agents or

employees, at the Limited Partner's cost and expense, shall have the right at all reasonable times during usual business hours to audit, examine and make copies of or extracts from the books of account, records, files and bank statements of the Partnership, to have access to the Pipeline Assets and to examine all agreements, instruments, plans and specifications relating to the Pipeline Assets. The General Partner shall cause to be maintained at the Partnership's principal office the records required by Section 153.551 of the Act to be maintained there.

**9.2. Financial Reports.** Within a reasonable time after the end of each Fiscal Year, the General Partner shall cause the Partnership to provide to each Limited Partner (a) unaudited financial statements of the Partnership prepared in accordance with GAAP for and as of the end of the Fiscal Year, including a balance sheet, income statement, cash flow statement and statement of changes in the Partner's capital accounts from the last day of the preceding Fiscal Year, and (b) a statement reconciling the capital accounts of the Partners reflected in such financial reports to the Capital Accounts of the Partners maintained in accordance with this Agreement. The Partnership shall also provide to the Limited Partners on a monthly basis an unaudited balance sheet and income statement of the Partnership.

**9.3. Tax Returns and Reports.** The General Partner shall cause to be prepared and filed the annual federal information tax return of the Partnership and all other returns or reports required of the Partnership by any federal, state, local or foreign tax authority. The General Partner shall cause a copy of the Partnership's annual federal information tax return, together with all information required by the Treasury Regulations to be furnished to the Limited Partners to enable them to prepare their individual federal income tax returns.

**9.4. Tax Matters Partner.** The General Partner shall be the "tax matters partner" of the Partnership for purposes of Code § 6231(a)(7). The tax matters partner shall keep the Partners informed of all administrative and judicial proceedings, as required by Section 6623(g) of the Code, and shall promptly furnish to each Partner a copy of each notice or other communication received by the tax matters partner from the Internal Revenue Service (except notices or communications sent directly to a requesting Partner by the Internal Revenue Service). Each Person (a "**Pass-Through Partner**") that holds or controls an Interest as a Limited Partner on behalf of, or for the benefit of, another Person or Persons, or that is beneficially owned, directly or indirectly, by another Person or Persons, shall, within thirty (30) days following receipt from the tax matters partner of any notice, demand, request for information or similar document, convey that notice or other document in writing to all holders of beneficial interests in the Partnership holding such Interest through the Pass-Through Partner. The expenses of the tax matters partner shall be borne by the Partnership. If the Partnership is the subject of any audit or other administrative or judicial proceeding relating to taxes or tax or information returns of the Partnership, the tax matters partner is exclusively authorized to act for, and its decision shall be final and binding upon, the Partnership and each Partner.

**9.5. Consistent Reporting; Tax Elections.** The Limited Partners shall not take any position on their individual income tax returns inconsistent with the reporting of items on the Partnership's related information tax returns, except as permitted by the Code. No election shall be made by or on behalf of the Partnership for federal income tax purposes to be classified as an association taxable as a corporation or to be excluded from the application of the provisions of subchapter K of Chapter 1 of the Code. All other tax elections available to the Partnership may be made in the sole discretion of the General Partner.



ARTICLE X

WITHDRAWAL, WINDING UP AND LIQUIDATION

**10.1. Withdrawal of Limited Partner.** Except by reason of the transfer of all of its Interest to another Partner, the Partnership or a person admitted as a substituted Limited Partner pursuant to Section 6.5, a Limited Partner has neither the right nor the power to withdraw from the Partnership prior to the completion of its winding up.

**10.2. Withdrawal of General Partner.** Except as provided in Section 6.2(b), the General Partner has the right to withdraw as General Partner only with the consent of and upon such terms and conditions as have been approved by a Majority Interest.

**10.3. Winding Up.** The Partnership shall be wound up upon:

(a) the expiration of its term as provided in Section 2.2;

(b) the bankruptcy, dissolution, termination of existence or occurrence of any other event of withdrawal of a General Partner described in Section 153.155 of the Act, unless (i) there remains at least one General Partner that continues the Partnership's business, or (ii) within ninety (90) days after the event of withdrawal, a Majority Interest agree in writing to continue the Partnership's business and to the appointment, effective as of the date of the withdrawal, of one or more new General Partners

(c) the sale, exchange, transfer or other disposition of all or substantially all of the Pipeline Assets; and

(d) any other event that, under this Agreement or the Act, requires the winding up of the Partnership, except as otherwise provided herein.

**10.4. Conversion of General Partner's Interest.** If pursuant to Section 10.3(b), the Partnership is continued and not dissolved upon the occurrence of an event of withdrawal of a General Partner, the Interest of the withdrawn General Partner shall automatically be converted to a special Limited Partner Interest effective as of the date of the event of withdrawal, with the same Capital Account and rights to participate in distributions and allocations pursuant to this Agreement as existed immediately before such conversion. Such conversion shall not release the former General Partner from any liabilities of the Partnership existing prior to such conversion nor prejudice any other rights or causes of action at law or in equity that the Partnership or the Limited Partners may have against the former General Partner as a result of any wrongful withdrawal. Following such conversion, the Partnership may withhold and retain the amount of any damages that result from a wrongful withdrawal by the former General Partner from any distributions that would otherwise be payable to the former General Partner under this Agreement.

**10.5. Liquidation.** Upon winding up of the Partnership, unless the Partnership is continued pursuant to the provisions of this Agreement, the General Partner (or a liquidating trustee selected by a Majority Interest) shall proceed with the winding up of the business and the liquidation of the Partnership as set forth under Article XI.

## ARTICLE XI

### DISTRIBUTIONS ON LIQUIDATION

#### 11.1. Liquidation and Termination.

(a) In the event of the winding up of the Partnership in accordance with Section 10.3, unless the remaining Partners, if any, elect to continue the business of the Partnership as provided by the terms of this Agreement, the General Partner or the liquidating trustee of the Partnership shall proceed with the winding up of the affairs of the Partnership. Upon the winding up of the Partnership, no further business shall be conducted, except for such action as shall be necessary for the winding up of the affairs of the Partnership and the distribution of its assets to the Partners pursuant to the provisions of this Article XI. The General Partner or the liquidating trustee shall proceed diligently to wind up the affairs of the Partnership and make final distributions provided herein. The costs of liquidation shall be borne as a Partnership expense. Until final distribution and termination of the Partnership, any liquidating trustee shall continue to operate the Partnership with all the power and authority of the General Partner. The General Partner shall act as liquidating trustee or may appoint in writing one or more liquidating trustees who shall have full authority to wind up the affairs of the Partnership and to make final distribution as provided herein; *provided, however*, that if the Partnership is dissolved by an act which constitutes a breach of this Agreement by the General Partner, the Limited Partners shall, by a vote of the Majority Interest, designate a party to act as the liquidating trustee. The liquidating trustee may be a Partner so long as the Partner is not in breach of its obligations under this Agreement.

(b) Upon winding up of the Partnership, the General Partner or the liquidating trustee may sell any or all Partnership property, at the best cash price available or it may distribute those properties in kind.

(c) The General Partner or the liquidating trustee shall, to the extent a Partner's Capital Account balance (as adjusted by Section 11.2) is not reduced to a negative number by virtue of a liquidating distribution pursuant to this Section 11.1(c) and the subsections of this Section 11.1(c) below, apply and distribute the assets of the Partnership as follows:

(i) First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors of the Partnership (including Limited Partners, except in respect of distributions), including all expenses of winding up and liquidation;

(ii) Second, to the payment and discharge of all of the Partnership's debts and liabilities to the General Partner; and

(iii) Third, the balance, if any, to the General Partner and Limited Partners in accordance with their positive Capital Account balances, after giving effect to all contributions, distributions, and allocations for all periods, including the distributions under the foregoing provisions of this Section 11.1(c).

(d) If the General Partner or the liquidating trustee and a Majority Interest agree, a pro rata portion of the distributions that would otherwise be made to the General Partner and Limited Partners pursuant to Section 11.1(c) may be:

(i) distributed to a trust established for the benefit of the General Partner and Limited Partners for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the General Partner and Limited Partners from time to time, in the reasonable discretion of the General Partner or the liquidating trustee, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the General Partner and Limited Partners pursuant to this Agreement; or

(ii) withheld to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld amounts shall be distributed to the General Partner and Limited Partners as soon as practicable.

**11.2. Compliance with Timing Requirements of Regulations.** In the event the Partnership is "liquidated" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, (a) distributions shall be made pursuant to this Article XI to the General Partner and Limited Partners who have positive Capital Accounts in compliance with Section 1.704-(b)(2)(ii)(b)(2) of the Regulations, and (b) if the General Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions, and allocations for all taxable years, including the year during which such liquidation occurs), such General Partner shall contribute to the capital of the Partnership the amount necessary to restore such deficit balance to zero in compliance with Section 1.704-1(b)(2)(ii)(b)(3) of the Regulations. If any Limited Partner has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), such Limited Partner shall have no obligation to make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other Person for any purpose whatsoever.

**11.3. Deemed Distribution and Recontribution.** Notwithstanding any other provision of this Article XI, in the event the Partnership is liquidated within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations but it has not wound up pursuant to Section 10.3, the Partnership shall not be liquidated, the Partnership's liabilities shall not be paid or discharged,

and the Partnership's affairs shall not be wound up. Instead, the Partnership shall be deemed to have distributed the property in kind to the General Partner and Limited Partners, who shall be deemed to have assumed and taken such property subject to all Partnership liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the General Partner and Limited Partners shall be deemed to have recontributed the property in kind to the Partnership, which shall be deemed to have assumed and taken such property subject to all such liabilities.

**11.4. Certificate of Termination.** Upon completion of the distribution of Partnership assets as provided herein, the Partnership shall be terminated, and the General Partner or the liquidating trustee shall cause the filing with the Secretary of State of a certificate of termination and take such other actions as may be necessary to terminate the Partnership.

## ARTICLE XII

### REPRESENTATIONS OF THE PARTNERS

**12.1. Organization and Existence.** Each Partner who is not a natural Person represents to each of the other Partners and the Partnership that (a) the Partner is and will remain duly organized and validly existing under the applicable laws of its state of organization, (b) the Partner is and will remain qualified to do business and in good standing in all jurisdictions in which the nature of its business or the ownership of its assets makes such qualification necessary, (c) the Partner has all requisite power and authority to enter into this Agreement, (d) the execution, delivery and performance of this Agreement by the Partner have been duly authorized by all necessary action, (e) this Agreement is the legal, valid and binding obligation of the Partner, enforceable in accordance with its terms (except as limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally), and (f) the execution, delivery and performance of this Agreement by the Partner does not and will not violate, conflict with or constitute a default under (i) the Partner's governing documents, (ii) any instrument or agreement to which it is a party or by which any of its assets are bound, or (iii) any law, rule, regulation, order, writ, judgment, decree, determination or award applicable to the Partner or its assets.

**12.2. Securities Laws.** Each Limited Partner represents to each of the other Partners and the Partnership that (a) it is acquiring its Interest as a principal and for its own account, for investment purposes only and not with a view to, or for sale in connection with, any distribution of such Interest, nor with any present intention of distributing or selling such Interest, (b) it will not Transfer, or attempt to Transfer, its Interest or any part thereof in violation of the Securities Act, or any other applicable federal or state securities law, (c) it has been advised that (i) the issuance of an Interest to it has not been registered with the Securities and Exchange Commission under the Securities Act or registered with any state agency under applicable state securities laws, in reliance upon an exemption from such registration, and (ii) it must bear the economic risk of the acquisition of the Interest for an indefinite period of time because it may not offer, sell, Transfer or otherwise dispose of the Interest unless the offer, sale, Transfer or other disposition has been registered under the Securities Act and any applicable state securities laws or, in the opinion of counsel (acceptable to the General Partner), such offer, sale, Transfer or other disposition is otherwise exempt from registration under the Securities Act and applicable

state securities laws, and otherwise complies with the restrictions on Transfer set forth in this Agreement, and (d) it understands that the Partnership is under no obligation to register the offer, sale, Transfer or other disposition of the Interest or to take any other action necessary in order to make compliance with an exemption from registration available.

**12.3. Pending or Threatened Litigation.** Each Partner represents to each of the other Partners and the Partnership that there are no actions, suits or proceedings pending or, to its knowledge, threatened against the Partner in any court or by or before any governmental authority, or any arbitrator, in which there is a reasonable possibility of an adverse decision that could reasonably be expected to materially and adversely affect the business, operations, properties, assets, or condition (financial or otherwise) of the Partnership, or the ability of the Partner to perform its obligations under this Agreement.

**12.4. ERISA.** Each Partner represents to each of the other Partners and the Partnership that (a) it is not acquiring and has not acquired its Interest with assets of an employee benefit plan subject to Title I of ERISA, and (b) its acquisition and holding of its Interest pursuant to this Agreement will not result in or create a “prohibited transaction,” as defined in § 4975(c) of the Code, cause the Partnership to be a “disqualified Person,” as defined in § 4975(e)(2) of the Code, or a “party in interest,” as defined in § 3(14) of ERISA.

**12.5. Survival; Indemnity.** The representations and warranties of each Partner pursuant to this Article XII shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and shall continue in effect indefinitely thereafter. Each Partner shall indemnify and hold harmless the Partnership and each other Partner from and against any and all losses, costs, expenses (including professional fees), liabilities and damages resulting or arising from any breach of such representations by the indemnifying Partner.

## ARTICLE XIII

### POWER OF ATTORNEY

**13.1. Grant of Power.** Each Limited Partner, by the execution or adoption of this Agreement or by authorizing its execution or adoption on its behalf, irrevocably constitutes and appoints the General Partner, and any additional or successor General Partner, with full power of substitution and resubstitution, its true and lawful attorney and agent, with full power and authority for it and in its name, place, and stead to execute, certify, acknowledge, swear to, file, and record in the appropriate public offices (a) this Agreement, (b) all amendments thereto that have been adopted in accordance with this Agreement, (c) all Certificates, and (d) all other agreements, certificates, instruments and other documents that the General Partner reasonably deems necessary or appropriate to conduct the Partnership’s business and affairs and that have been executed, adopted or otherwise put into effect in accordance with the provisions of this Agreement and the Act. Each Limited Partner authorizes such attorney-in-fact to take any further action it may reasonably consider necessary or advisable in connection with any of the foregoing, hereby giving such attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever requisite or advisable to be done in and about the foregoing as fully as such Limited Partner might or could do if Personally present.

**13.2. Duration; Reliance.** The power of attorney granted in Section 13.1 shall be deemed to be coupled with an interest and irrevocable, and shall survive an assignment by a Limited Partner of all or part of its Interest (except that if the assignee is admitted as a Limited Partner, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling such attorney-in-fact to execute, acknowledge, swear to and file any agreement, certificate, instrument or document necessary to effect such admission), and the death, incompetency or termination of existence of the Limited Partner. Any Person dealing with the Partnership may conclusively presume and rely upon the fact that any document executed by the attorney and agent herein appointed is regular and binding without further inquiry.

#### ARTICLE XIV

#### MISCELLANEOUS

**14.1. Notices.** All notices, consents, approvals, demands, requests and other communications which may or are required to be given under this Agreement shall be in writing and shall be sent by courier, facsimile or other means, or by United States mail, registered or certified, return receipt requested, postage prepaid. Communications to the Partnership shall be addressed to the Partnership at the address of its principal office. Communications to a Partner shall be addressed to the Partner at the address of the Partner set forth on Schedule A or such other address notice of which has been delivered to the Partnership and the Partners as provided in this Section. Communications hereunder shall be deemed to have been given three days after deposit in the United States mail as herein provided, or when actually received by the addressee if given by other means.

**14.2. Facsimile Signatures.** A photographic, photostatic, facsimile or similar reproduction of a writing signed by a Person, shall be regarded as signed by the Person for all purposes of this Agreement.

**14.3. Offset.** The Partnership may offset and deduct any sums due it from a Partner from the amount of any distribution or other payment to a Partner.

**14.4. Construction.** Unless otherwise required by the context, as used herein (a) the gender of words includes the masculine, feminine, and neuter genders, (b) the singular includes the plural (and *vice versa*), (c) the words include, including and similar derivations are without limitation, (d) the words herein, hereinafter and similar derivations refer to this Agreement as a whole, and (e) captions are for reference only and shall not affect the interpretation of this Agreement.

**14.5. Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall constitute one and the same agreement. Signature pages to any counterpart may be detached, executed and attached to a single counterpart with the same force and effect as if all parties had executed a single signature page hereof.

**14.6. Amendments to Agreement.** Any amendments to this Agreement shall be in writing and may be adopted only with the consent of the General Partner. Notwithstanding the preceding sentence, the consent of each affected Limited Partner must be obtained for any amendment that would (i) adversely affect the Limited Partner's rights to distributions (other than as a result of the admission of additional Limited Partners in accordance with this Agreement), (ii) increase the Limited Partner's Capital Contribution obligation, (iii) eliminate or decrease the limited liability of the Limited Partner, (iv) amend the provisions of this Section, or (v) lower the threshold required by this Agreement for obtaining any vote or consent of the Limited Partners.

**14.7. Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT MIGHT REFER SUCH GOVERNANCE OR CONSTRUCTION TO THE LAWS OF ANOTHER JURISDICTION.

**14.8. Mergers.**

(a) The Partnership may merge with one or more corporations, business trusts or associations, real estate investment trusts, limited liability companies, common law trusts or unincorporated businesses, including, without limitation, a general partnership or limited partnership, formed under the laws of the State of Texas or any other state of the United States of America, pursuant to a written plan of merger ("**Plan of Merger**") in accordance with this Section. The Plan of Merger shall contain all of the information required to be contained therein by the Act and the laws of any other applicable state.

(b) Any merger of the Partnership pursuant to this Section requires the prior approval of the General Partner. If the General Partner shall determine, in the exercise of its sole discretion, to consent to the merger, the General Partner shall approve the Plan of Merger.

(c) The General Partner of the Partnership, upon its approval of the Plan of Merger, shall direct that a copy of the Plan of Merger be submitted to a vote of the Limited Partners whether at a meeting or by written consent, in either case in accordance with the requirements of Section 8.3. The Plan of Merger shall be approved upon receiving the affirmative vote or consent of a Majority Interest. After such approval by vote or consent of the Limited Partners, and at any time prior to the filing of the certificate of merger pursuant to subsection (d) below, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the Plan of Merger.

(d) Upon the required approval by the General Partner and the Limited Partners of a Plan of Merger, a certificate of merger shall be executed and filed with the Secretary of State of the State of Texas in conformity with the requirements of the Act.

(e) Upon the effective date of the certificate of merger, the merger shall have the effects specified in the Act and in the Plan of Merger. A merger effected pursuant to this Section shall not be deemed to result in a transfer or assignment of assets or liabilities from one entity to another having occurred.

**14.9. Binding Effect.** Except as otherwise expressly provided herein, (a) this Agreement shall be binding upon and inure to the benefit of only the Partners, their heirs, legal representatives, successors and permitted assigns, and (b) no provision hereof shall be construed as benefiting any creditor of the Partnership or a Partner, or other third-party.

**14.10. Severability.** If any provision of this Agreement is held to be illegal or unenforceable, the remaining provisions shall be enforced and applied as if the illegal or unenforceable provision was not a part of this Agreement.

**14.11. Integration.** This Agreement contains the entire understanding among the Partners, and supersedes any prior agreements, understandings, inducements, representations and conditions, expressed or implied, written or oral, among them respecting the subject matter hereof.

**14.12. Waivers.** Neither the failure nor the delay on the part of the Partnership or any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof. No waiver shall be effective unless it is in writing and is signed by the Person asserted to have granted the waiver.

**14.13. Further Assurances.** Each Partner shall execute and deliver any additional documents and instruments and perform any additional acts required or appropriate to effectuate the provisions of this Agreement and the transactions contemplated hereby.



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

**GENERAL PARTNER:**

Longwood Gathering and Disposal Systems, Inc.

By: /s/ Joseph Wm. Foran

Joseph Wm. Foran  
Chairman and Chief Executive Officer

**LIMITED PARTNER:**

Matador Resources Company

By: /s/ David E. Lancaster

David E. Lancaster  
Vice President and Chief Financial Officer

**SCHEDULE A**

**PARTNER ADDRESSES, INITIAL CAPITAL CONTRIBUTIONS  
AND  
DISTRIBUTION PERCENTAGES**

<u>Name &amp; Address</u>	<u>Initial Capital Contributions</u>	<u>Distribution Percentages (%)</u>
Matador Resources Company 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240	Pipeline Assets having a value of \$5,209,479.00	99.99%
Longwood Gathering and Disposal Systems, Inc. 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240	\$521.00	0.01%
<b>TOTAL</b>	<b>\$5,210,000.00</b>	<b>100.00%</b>

**CERTIFICATE OF FORMATION**  
**OF**  
**LONGWOOD GATHERING AND DISPOSAL SYSTEMS, INC.**

I, the undersigned person, having the capacity to contract, acting as organizer of a for-profit corporation under the Texas Business Organizations Code (the "Code"), do hereby adopt the following Certificate of Formation for such corporation:

1. The type of entity being formed is a for-profit corporation.
2. The name of the corporation is Longwood Gathering and Disposal Systems, Inc.
3. The corporation is formed for the purpose of engaging in any lawful act, activity and/or business for which corporations may be formed under the Code.
4. The aggregate number of shares that the corporation shall have authority to issue is One Thousand (1,000) shares of common capital stock, par value one cent (\$0.01) per share.
5. The address of its initial registered office is One Lincoln Centre, 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240, and the name of its initial registered agent at such address is Joseph Wm. Foran.
6. The number of directors of this corporation shall be not less than one (1) nor more than nine (9), the exact number to be fixed from time to time in the manner provided in the Bylaws of the corporation. The number of directors constituting the initial Board of Directors is one (1), and the name and address of such person who is to serve as director until the first annual meeting of the shareholders or until his/her successor is elected and qualified are:

Name  
Joseph Wm. Foran

Address  
One Lincoln Centre  
5400 LBJ Freeway  
Suite 1500  
Dallas, Texas 75240

The Board of Directors shall have the power to alter, amend or repeal the Bylaws of the corporation or to adopt new Bylaws.

7. The name and address of the organizer is:

Name  
Christopher D. Schouest

Address  
One Lincoln Centre  
5400 LBJ Freeway  
Suite 1500  
Dallas, Texas 75240

8. The Board of Directors of the corporation, in its sole discretion, shall have the power, on behalf of the corporation, to indemnify persons for whom indemnification is permitted by applicable Texas law, to the fullest extent permissible under applicable Texas law, and may purchase such liability, indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The corporation may purchase and maintain liability, indemnification and/or other similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Section 8 shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, the governing documents of the corporation, contract, other agreement, vote or otherwise.

9. No contract or other transaction between this corporation and any person, firm, association or corporation and no act of this corporation, shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of this corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the corporation or to any shareholder or creditor thereof for any loss incurred by this corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.

10. No member of the Board of Directors of the corporation shall be liable, personally or otherwise, in any way to the corporation or its shareholders for monetary damages caused in any way by an act or omission occurring in the director's capacity as a director of the corporation, except as otherwise expressly provided by applicable Texas law.

11. Any action required by the Code to be taken at any annual or special meeting of the shareholders of the corporation, and/or any action that may be taken at any annual or special meeting of the shareholders of the corporation, may be taken without a meeting, without prior

notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

IN WITNESS WHEREOF, I have hereunto set my hand, this 10<sup>th</sup> day of February, 2006.

/s/ Christopher D. Schouest

Christopher D. Schouest

**CERTIFICATE OF AMENDMENT  
OF  
LONGWOOD GATHERING AND DISPOSAL SYSTEMS, INC.**

ARTICLE 1. The name of the filing entity is Longwood Gathering and Disposal Systems, Inc.

ARTICLE 2. The filing entity is a for-profit corporation.

ARTICLE 3. The file number issued to the corporation by the secretary of state is 800611913 and the date of formation of the corporation is February 10, 2006.

ARTICLE 4. The following amendment to the Certificate of Formation was adopted by the sole shareholder of the corporation on September 22, 2006:

Section 2 of the Certificate of Formation is hereby amended so as to read in its entirety as follows:

“Section 2. The name of the corporation is Longwood Gathering and Disposal Systems GP, Inc.”

ARTICLE 5. The amendment to the Certificate of Formation has been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the corporation.

DATED: September 22, 2006.

LONGWOOD GATHERING AND DISPOSAL  
SYSTEMS, INC.

By: /s/ Joseph Wm. Foran  
Joseph Wm. Foran, President

## LONGWOOD GATHERING AND DISPOSAL SYSTEMS, INC.

BYLAWS

## ARTICLE I

## OFFICES

Section 1.01 Registered Office. The registered office of the corporation shall be located at such place within the State of Texas as the Board of Directors may from time to time determine. The initial registered office of the corporation shall be as specified in the Certificate of Formation of the corporation.

Section 1.02 Other Offices. The corporation may also have offices at such other places, either within or without the State of Texas, as the board of directors may from time to time determine or as the business of the corporation may require.

## ARTICLE II

## MEETINGS OF SHAREHOLDERS

Section 2.01 Location. All annual meetings of shareholders shall be held at the offices of the corporation in the City of Dallas, County of Dallas, State of Texas, or at such other place, within or without the State of Texas, as may be designated by the board of directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof. All special meetings of shareholders shall be held at such location, within or without the State of Texas, as may be designated by the board of directors or as may be stated in the notice of the meeting or in a duly executed waiver of notice thereof. The board of directors may determine that a meeting will have no designated location because it is to be held solely by means of a conference telephone or other communication system authorized in Section 2.13 of these Bylaws.

Section 2.02 Annual Meetings. Annual meetings of shareholders shall be held at such time and date as may be designated by the Board of Directors, at which the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

Section 2.03 Special Meetings. Special meetings of the shareholders may be called by the president, the board of directors or the holders of not less than ten percent (10%) of all shares entitled to vote at the meeting. Business transacted at any special meeting shall be confined to the purposes stated in the notice thereof.

Section 2.04 Notice. Written or printed notice stating the location, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the day of the meeting, either personally, by electronic transmission or by mail, by or at the direction of the president, the secretary or the officer or person calling the meeting, to each shareholder entitled to vote at such meeting. If the meeting is held solely by using a conference telephone or other



communication system authorized by Section 2.13 of these Bylaws, no location for the meeting need be specified in the notice of the meeting. If the meeting is held solely or in part by using a conference telephone or other communication system authorized by Section 2.13, the form of communication system to be used for the meeting and the means for accessing the communication system must be stated in the notice.

Section 2.05 Quorum. The holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at meetings of shareholders except as otherwise provided in the Certificate of Formation in accordance with Section 21.358 of the Texas Business Organizations Code, as amended (the "TBOC"). Unless otherwise provided in the Certificate of Formation, once a quorum is present at a meeting of the shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting by any shareholder or the refusal of any shareholder represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting. Unless otherwise provided in the Certificate of Formation, the shareholders represented in person or by proxy at any meeting of the shareholders at which a quorum is not present may adjourn the meeting until such time and to such place as may be determined by a vote of the holders of a majority of the shares represented in person or by proxy at that meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 2.06 Votes Required for Action. With respect to any matter, other than the election of directors or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by the TBOC, the affirmative vote of the holders of a majority of the shares entitled to vote on that matter and represented in person or by proxy at a meeting of shareholders at which a quorum is present shall be the act of the shareholders, unless otherwise provided by the Certificate of Formation in accordance with the TBOC. Unless otherwise provided in the Certificate of Formation in accordance with the TBOC, directors shall be elected by a plurality of the votes cast by the holders of shares entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present.

Section 2.07 Voting Rights. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class are limited or denied by the Certificate of Formation or the TBOC.

Section 2.08 Proxies. A shareholder may vote in person or by proxy executed in writing by the shareholder. A telegram, telex, cablegram or other form of electronic transmission, including telephonic transmission, by the shareholder, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the shareholder is considered an execution in writing for purposes of this Section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

Section 2.09 List of Shareholders. The officer or agent having charge of the stock transfer books shall prepare, not later than the eleventh (11<sup>th</sup>) day before the date of each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the type and number of shares held by each shareholder, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office or principal place of business of the corporation and shall be subject to inspection by any shareholder at any time during the usual business hours. Alternatively, the list of the shareholders may be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. This Section does not require the corporation to include any electronic contact information of any shareholder on the list. If the corporation elects to make the list available on an electronic network, the corporation shall take reasonable steps to ensure that the information is available only to shareholders of the corporation. The list of shareholders shall be produced and kept open at the meeting and shall be subject to the inspection of any shareholder during regular business hours. If the meeting is held by means of remote communication, the list must be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting. The original share transfer records shall be prima facie evidence of the shareholders entitled to examine such list or transfer records or to vote at any such meeting of shareholders.

Section 2.10 Closing of Share Transfer Records and Fixing Record Date for Matters Other than Consents to Action. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of the shareholders), the board of directors may provide that the share transfer records shall be closed for a stated period not to exceed, in any case, sixty (60) days. If the share transfer records shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such records shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the share transfer records, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty (60) days, and, in case of a meeting of shareholders, not less than ten (10) days, prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, the date on which the notice of the meeting is mailed or given or the date on which the resolutions of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.

Section 2.11 Fixing Record Dates for Consents to Action. Unless a record date shall previously have been fixed or determined pursuant to Section 2.10 or this Section 2.11 of these Bylaws, whenever action by shareholders is proposed to be taken by consent in writing without a meeting of the shareholders, the board of directors may fix a record date for the purpose of determining shareholders entitled to consent to that action, which record date shall not precede, and shall not be more than ten (10) days after, the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors and the prior action of the board of directors is not required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded, with such delivery made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, with such delivery addressed to the president of the corporation. If no record date shall have been fixed by the board of directors and prior action of the board of directors is required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts a resolution taking such prior action.

Section 2.12 Action Without Meeting.

(1) Any action required by law to be taken at a meeting of the shareholders, and/or any action that may be taken at a meeting of the shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent of the shareholders shall bear the date of signature of each shareholder who signs the consent. No written consent solicited on behalf of a person other than the corporation or the board of directors shall be effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the corporation as provided below, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of the shareholders are recorded. Such delivery shall be made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, shall be addressed to the president of the corporation.

(3) A telegram, telex, cablegram, or other electronic transmission by a shareholder consenting to an action to be taken is considered to be written, signed, and dated for the purposes

of this Section if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the shareholder and the date on which the shareholder transmitted the transmission. The date of transmission is the date on which the consent was signed. Consent given by telegram, telex, cablegram, or other electronic transmission may not be considered delivered until the consent is reproduced in paper form and the paper form is delivered to the corporation at its registered office in this state or its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded. Notwithstanding Subsection (2) of this Section, consent given by telegram, telex, cablegram, or other electronic transmission may be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded to the extent and in the manner provided by resolution of the board of directors of the corporation. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a shareholder may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing.

(4) Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

Section 2.13 Telephone or Remote Communication Meetings. Shareholders may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every shareholder voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 2.14 Minutes. The shareholders shall keep regular minutes of their proceedings, and such minutes shall be placed in the minute book of the corporation.

### ARTICLE III

#### DIRECTORS

Section 3.01 Management. The powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, its board of directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or by the Certificate of Formation or by these Bylaws directed or required to be exercised and done by the shareholders.

Section 3.02 Number; Election; Term; Qualification; Removal. The number of directors of the corporation shall be such number as shall be from time to time specified by resolution of the board of directors; provided, however, that no director's term shall be shortened by reason of a resolution reducing the number of directors; and further provided that the number of directors constituting the initial board of directors shall be one (1), and shall remain at such number unless and until changed by resolution of the board of directors as aforesaid. The directors shall be elected at the annual meeting of the shareholders, except as provided in Section 3.03, and each director elected shall hold office for the term for which he is elected and until his successor is elected and qualified. Directors need not be residents of the State of Texas or shareholders of the corporation. Any director may be removed at any time, with or without cause, at a special meeting of the shareholders called for that purpose.

Section 3.03 Resignations; Vacancies. A director may resign at any time by giving written notice to the board of directors or the chairman of the board. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors (or by the sole remaining director) though less than a quorum of the board of directors, or may be filled by an election at an annual or special meeting of the shareholders called for that purpose; provided, however, that if the vacancy is caused by reason of an increase in the number of directors, the board of directors may vote to fill not more than two such directorships during the period between any two successive annual meetings of shareholders. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office, or until the next election of one or more directors by shareholders if the vacancy is caused by an increase in the number of directors.

Section 3.04 Location of Meetings. Meetings of the board of directors, regular or special, may be held either within or without the State of Texas.

Section 3.05 First Meeting of New Board. The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the shareholders at the annual meeting, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the shareholders to fix the time and place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the shareholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

Section 3.06 Regular Meetings. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

Section 3.07 Special Meetings. Special meetings of the board of directors may be called by the chairman of the board or the president and shall be called by the secretary on the written request of any director. Written notice of special meetings of the board of directors shall be given to each director at least three (3) days before the date of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 3.08 Quorum; Votes Required. A majority of the directors shall constitute a quorum for the transaction of business and the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is required by law or the Certificate of Formation. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 3.09 Action Without Meeting. The Board of Directors or committee of the Board of Directors may take action without holding a meeting, providing notice, or taking a vote if each director or member of the committee entitled to vote on the action signs a written consent or consents stating the action taken. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a director or member of the committee may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing. Advance notice is not required to be given to take an action by written consent. Such consent shall have the same force and effect as a unanimous vote at a meeting of the board of directors or the committee, as the case may be, duly called and held.

Section 3.10 Telephone Meetings. Directors and committee members may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every director or committee member voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 3.11 Committees of Directors. The board of directors, by resolution adopted by a majority of the whole board, may designate from among its members one or more committees, each of which shall be comprised of one or more of its members, and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified members at any meeting of that committee. Any such committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the board of directors in the business and affairs of the corporation except where the action of the board of directors is required, or the authority of such committee is limited, by statute. The number of members on each committee may be increased or decreased from time to time by resolution of the board of directors. Any member of any committee may be removed from such committee at any time by resolution of the board of directors. Vacancies in the membership of a committee (whether by death, resignation, removal or otherwise) may be

filled by resolution of the board of directors. The time, place and notice (if any) of meetings of any committee shall be determined by such committee. At meetings of any committee, a majority of the number of members of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee, except as otherwise specifically provided by statute, the Certificate of Formation, or these Bylaws. If a quorum is not present at a meeting of any committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Each committee shall keep regular minutes of its proceedings and report the same to the board when required. The designation of any such committee of the board of directors and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

Section 3.12 Compensation of Directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of committees of the board may be allowed like compensation for attending committee meetings.

Section 3.13 Minutes. The board of directors shall keep regular minutes of its proceedings, and such minutes shall be placed in the minute book of the corporation.

#### ARTICLE IV

##### NOTICES

Section 4.01 General. Notices to shareholders, directors and committee members shall be in writing and may be delivered personally or mailed by U.S. mail, postage prepaid, to the shareholders, directors or committee members, respectively, at their addresses appearing on the books and share transfer records of the corporation. Notice to shareholders shall be deemed to be given at the time when the same shall be so delivered or mailed. Notice to directors and committee members may also be given by nationally recognized overnight delivery or courier service, facsimile transmission or telegram, and shall be deemed given when such notice shall be received by the proper recipient or, if earlier, (i) in the case of an overnight delivery or courier service, one (1) day after such notice is sent by such overnight delivery or courier service; (ii) in the case of telegraph, when deposited at a telegraph office for transmission and all appropriate fees therefor have been paid; and (iii) in the case of mailing by U.S. mail, three (3) days after such notice is mailed as described above. On consent of a shareholder, director or committee member, notice from the corporation may be given to the shareholder, director or committee member by electronic transmission. The shareholder, director or committee member may specify the form of electronic transmission to be used to communicate notice. The shareholder, director or committee member may revoke this consent by written notice to the corporation. The consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the person responsible for delivering notice on behalf of the corporation knows that delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of consent does not

invalidate a meeting or other action. Notice by electronic transmission is deemed given when the notice is (i) transmitted to a facsimile number provided by the shareholder, director or committee member for the purpose of receiving notice; (ii) transmitted to an electronic mail address provided by the shareholder, director or committee member for the purpose of receiving notice; (iii) posted on an electronic network and a message is sent to the shareholder, director or committee member at the address provided by the shareholder, director or committee member for the purpose of alerting the shareholder, director or committee member of a posting; or (iv) communicated to the shareholder, director or committee member by any other form of electronic transmission consented to by the shareholder, director or committee member.

Section 4.02 Waivers. Whenever any notice is required to be given to any shareholder, director or committee member under the provisions of law or of the Certificate of Formation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 4.03 Attendance as Waiver. Attendance of a director or member of a committee at a meeting shall constitute a waiver of notice of such meeting, except where a director or committee member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.04 Omission of Notice to Shareholders. Any notice required to be given to any shareholder under any provision of the TBOC, the Certificate of Formation or these Bylaws need not be given to the shareholder if (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a twelve (12) month period have been mailed to that person, addressed at his address as shown on the share transfer records of the corporation, and have been returned undeliverable. Any action or meeting taken or held without notice to such a person shall have the same force and effect as if the notice had been duly given. If such a person delivers to the corporation a written notice setting forth his then current address, the requirement that notice be given to that person shall be reinstated.

## ARTICLE V

### OFFICERS

Section 5.01 General. The officers of the corporation shall consist of a president and a secretary and may also include a chairman of the board, a vice-chairman of the board, one or more vice presidents, one or more assistant secretaries, and a treasurer and one or more assistant treasurers, each of whom shall be elected by the board of directors. The chairman and vice-chairman of the board, if any, shall each be members of the board of directors, but no other officers of the corporation need be a director. Any two or more offices may be held by the same person.

Section 5.2 Election of Officers; Salaries. At the first meeting of the board of directors after each annual meeting of shareholders, the board of directors shall choose a president and a secretary. Such other officers and assistant officers and agents as may be deemed necessary may also be elected or appointed by the board of directors. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.



Section 5.03 Term of Office. The officers of the corporation shall hold office until their respective successors are chosen and qualify. Any officer or agent who is elected or appointed by the board of directors may be removed by the board of directors at any time, if, in the judgment of the board of directors, the best interests of the corporation will be served thereby; provided, that such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancy occurring in any office of the corporation (whether by death, resignation, removal or otherwise) shall be filled by resolution of the board of directors.

Section 5.04 Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as chairman of the board. The chairman of the board, if any, shall preside at meetings of the shareholders and of the board of directors, shall be an ex officio member of all committees, and shall have such other powers and perform such other duties as the board of directors may from time to time prescribe.

Section 5.05 Vice-Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as vice-chairman of the board. The vice-chairman of the board, if any, shall in the absence of the chairman of the board perform the duties and exercise the powers of the chairman of the board, and shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.06 President. The president shall be the chief executive officer of the corporation, shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect. In the event the board of directors shall not have designated a chairman of the board, or in the absence of the chairman of the board, the president shall preside at meetings of the shareholders and the board of directors. The president may sign and execute contracts, agreements and other documents on behalf of the corporation, and may sign and execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation. In addition, the president shall have such other powers and perform such other duties as shall be designated by the board of directors from time to time.

Section 5.07 Vice Presidents. The vice presidents, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the president, perform the duties and exercise the powers of the president. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.08 Secretary. The secretary shall attend all meetings of the board of directors and all meetings of the shareholders and record all the proceedings of the meetings of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for any committees when required. The secretary shall give, or cause to be given,

notice of all meetings of the shareholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. The secretary shall keep in safe custody the seal of the corporation and, when authorized by the board of directors, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of an assistant secretary, the treasurer or an assistant treasurer.

Section 5.09 Assistant Secretaries. The assistant secretaries, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.10 Treasurer. The treasurer, if any, shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. In the absence of the election or appointment of a treasurer or any assistant treasurers by the board of directors, the duties of the office of treasurer shall be performed by the secretary of the Corporation. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the president and the board of directors at its regular meetings or when the board of directors so requires an account of all his transactions as treasurer and of the financial condition of the corporation. If required by the board of directors, he shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 5.11 Assistant Treasurers. The assistant treasurers, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

## ARTICLE VI

### SHARES OF STOCK

Section 6.01 Certificates. The corporation shall deliver certificates representing all shares to which shareholders are entitled; and such certificates shall be signed by the president or a vice president, and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. Each certificate representing shares shall state upon the front thereof that the corporation is organized under the laws of the State of Texas, the name of the person to whom issued, the number and class and the designation of the series, if any, that such certificate represents, and the par value of each share represented by such certificate or a statement that the shares are without par value.

Section 6.02 Issuance; Payment. Shares (both treasury and authorized but unissued) may be issued for such consideration (not less than par value in the case of authorized but unissued shares) and to such persons as the board of directors may from time to time authorize. Consideration for the issuance of shares may consist of any type of consideration permitted under the TBOC. Shares may not be issued until the consideration for which the shares are to be issued shall have been paid or delivered as required in connection with the authorization of the shares. When the consideration is paid or delivered, such shares shall be considered to be issued and fully paid and nonassessable, and the subscriber or other person entitled to receive the shares shall be a shareholder with respect to the shares. In the absence of fraud in the transaction, the judgment of the board of directors is conclusive in determining the value and sufficiency of the consideration received for the shares.

Section 6.03 Shares of More than One Class. If the corporation is authorized to issue shares of more than one class or series, each certificate representing shares issued by the corporation shall conspicuously state on the front or back of the certificate (1) the designations, preferences, limitations and relative rights of the shares of each class or series to the extent they have been determined and the authority of the board of directors to make those determinations as to subsequent series; or (2) that the information required by clause (1) is stated in the Certificate of Formation on file in the office of the Secretary of State and that the corporation will furnish a free copy of that information to the record holder of the certificate on written request to the corporation at its principal place of business or registered office.

Section 6.04 Signatures. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation in the same manner and with the same effect as if he or she were such officer at the date of the issuance.

Section 6.05 Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

Section 6.06 Transfer of Certificates. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6.07 Restriction of Transfer of Shares. If the corporation issues any shares that are not registered under the Securities Act of 1933, as amended, and registered or qualified under any applicable state securities laws, the transfer of any such shares shall be restricted in accordance with the following legend, which legend (or a substantively similar legend) shall be conspicuously set forth on the front or back of each certificate representing such shares:

“The shares of stock represented by this certificate have not been registered under the Securities Act of 1933, as amended (the ‘Act’), or registered or qualified under the securities laws of any state, and the holder hereof cannot make any sale, assignment or other transfer of any shares of such stock except pursuant to an offering of such shares duly registered under the Act and registered or qualified under any applicable state securities laws, or under such other circumstances as in the opinion of counsel for or satisfactory to the issuer shall not, at the time, require registration under the Act and/or registration or qualification under any state securities law. Also said shares are ‘restricted securities’ within the meaning of Rule 144 promulgated by the Securities and Exchange Commission under the Act and may be subject to the limitations and reporting requirements of said rule upon resale or other disposition thereof.”

In the event any restriction on the transfer, or registration of the transfer, of shares shall be imposed or agreed to by the corporation, each certificate representing shares so restricted (1) shall conspicuously set forth a full or summary statement of the restriction on the front of the certificate, or (2) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the front of the certificate, or (3) shall conspicuously state on the front or back of the certificate that such a restriction exists pursuant to a specified document and (a) that the corporation will furnish to the record holder of the certificate a free copy of the specified document upon written request to the corporation at its principal place of business or registered office, or (b) if such document has been filed in accordance with the TBOC, that such document is on file in the office of the Secretary of State and contains a full statement of such restriction.

Section 6.08 Registered Holders of Shares. Unless otherwise provided in the TBOC, and subject to the provisions of Chapter 8 - Investment Securities of the Texas Business and Commerce Code, as amended:

(1) The corporation may consider the person registered as the owner of a share in the share transfer records of the corporation at any particular time (including, without limitation, as of a record date fixed pursuant to Section 2.10 or 2.11 of these Bylaws) as the owner of that share at that time for purposes of voting that share, receiving distributions or notices in respect thereof, transferring the share, exercising rights of dissent with respect to that share, exercising or waiving any preemptive right with respect to that share, entering into any agreements with respect to that share in accordance with the TBOC, or giving proxies with respect to that share; and

(2) Neither the corporation nor any of its officers, directors, employees or agents shall be liable for regarding that person as the owner of that share at that time for those purposes, regardless of whether that person does not possess a certificate representing that share.

## ARTICLE VII

### INDEMNIFICATION

Section 7.01 General. The corporation shall indemnify persons for whom indemnification is permitted by the TBOC to the fullest extent permissible under the TBOC, and may purchase such indemnification insurance as the Board of Directors from time to time shall determine.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.01 Dividends. The board of directors may declare and the corporation may pay dividends on its outstanding shares in cash, property or its own shares pursuant to law and subject to the provisions of its Certificate of Formation.

Section 8.02 Reserves. The board of directors may by resolution create a reserve or reserves out of surplus for any proper purpose or purposes, and may modify or abolish any such reserve in the same manner.

Section 8.03 Books and Records. The corporation shall keep books and records of account and shall keep minutes of the proceedings of the shareholders, the board of directors and each committee of the board of directors. The corporation shall keep at its registered office or, whether within or outside the state of Texas, at its principal place of business or at the office of its transfer agent or registrar, a current record of the original issuance of shares issued by the corporation and a record of each transfer of those shares that have been presented to the corporation for registration of transfer. Such records shall contain the names and mailing addresses of all past and current shareholders and the number and class or series of shares issued by the corporation held by each of them. Any books, records, minutes and share transfer records may be in written paper form or in any other form capable of being converted into written paper form within a reasonable time.

Section 8.04 Report to Shareholders. The board of directors must, when requested by the holders of at least one-third (1/3) of the outstanding shares of the corporation, present to the shareholders written reports giving a full and clear statement of the business and condition of the corporation, including a reasonably detailed balance sheet and income statement.

Section 8.05 Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 8.06 Fiscal Year. The fiscal year of the corporation shall be fixed by the resolution of the board of directors.

Section 8.07 Seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Texas." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 8.08 Construction. Whenever the context or circumstances so require, for all terms used herein the masculine shall include the feminine and neuter, and the singular shall include the plural, and vice versa. If any provision of these Bylaws shall be held illegal, invalid or inoperative, then, so far as is reasonable and possible (1) the remainder of the Bylaws shall be and remain legal, valid and operative and (2) effect shall be given the intent manifested by the provision held illegal, invalid or inoperative and to that end, such illegal, invalid or inoperative provision shall be deemed to have been replaced by a provision that is as similar to such illegal, invalid or inoperative provision as possible and still be legal, valid and operative.

Section 8.09 Headings. Headings used in these Bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation of the substantive provisions of these Bylaws.

## ARTICLE IX

### AMENDMENT OF BYLAWS

Section 9.01 General. These Bylaws may be altered, amended or repealed or new bylaws may be adopted at any meeting of the board of directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting), subject to repeal or change at any meeting of the shareholders at which a quorum is present, by the affirmative vote of a majority of the shareholders present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting).

The undersigned Secretary of Longwood Gathering and Disposal Systems, Inc. hereby certifies that the foregoing Bylaws were duly adopted by Written Consent of the Board of Directors as of February 10, 2006.

/s/ Joseph Wm. Foran

Joseph Wm. Foran

**AMENDED AND RESTATED CERTIFICATE OF FORMATION  
OF  
MATADOR PRODUCTION COMPANY**

Pursuant to the provisions of the Texas Business Organizations Code (the “TBOC”), Matador Production Company, a Texas corporation, hereby files with the Texas Secretary of State this Amended and Restated Certificate of Formation (the “Restated Certificate”), which accurately states and copies the corporation’s Articles of Incorporation and all amendments thereto that are in effect to date (collectively, the “Existing Articles”) as further amended by this Restated Certificate as hereinafter set forth below, and which contains no other change in any provision thereof, other than the omission of the name and address of the incorporator of the corporation, as permitted by the TBOC.

ARTICLE ONE. The name of the corporation is Matador Production Company. The corporation is a Texas for-profit corporation.

ARTICLE TWO. The following paragraphs identify by reference or description each added, altered, or deleted provision:

1. The preamble of the Existing Articles is hereby deleted.
2. Article II of the Existing Articles is hereby amended and restated in its entirety so as to read as follows:

ARTICLE II

The corporation is a for-profit corporation.

3. Article III of the Existing Articles is hereby amended and restated in its entirety so as to read as follows:

ARTICLE III

The purpose for which the corporation is organized is the transaction of any or all lawful business for which for-profit corporations may be incorporated under the Texas Business Organization Code (the “TBOC”).

4. Article V in the Existing Articles is altered to delete the two references to “initial”.
5. Article VI in the Existing Articles is altered to update the current number of directors and the names and addresses of the persons currently serving as directors of the corporation.
6. Article VII in the Existing Articles is altered to replace the reference to the “Articles of Incorporation” with a reference to the “Certificate of Formation.”
7. Article X in the Existing Articles is altered to replace the reference to the “Act” with a reference to the “TBOC.”

ARTICLE THREE. Each of the amendments made by this Restated Certificate has been approved in the manner required by the TBOC and the governing documents of the corporation.

ARTICLE FOUR. The corporation's Existing Articles are hereby superseded by the Restated Certificate, as set forth on Exhibit A-1 hereto, which accurately states and copies the entire text of the Existing Articles as amended as set forth above, other than the omission of the name and address of the incorporator of the corporation, as permitted by the TBOC.

[Signature page follows.]



EXECUTED on October 26, 2010.

**MATADOR PRODUCTION COMPANY**

By: /s/ Joseph Wm. Foran

Name: Joseph Wm. Foran

Title: Chairman & CEO

**EXHIBIT A-1**

**AMENDED AND RESTATED CERTIFICATE OF FORMATION  
OF  
MATADOR PRODUCTION COMPANY**

**ARTICLE I**

The name of the corporation is Matador Production Company.

**ARTICLE II**

The corporation is a for-profit corporation.

**ARTICLE III**

The purpose for which the corporation is organized is the transaction of any or all lawful business for which for-profit corporations may be incorporated under the Texas Business Organization Code (the "TBOC").

**ARTICLE IV**

The aggregate number of shares that the corporation shall have authority to issue is One Thousand (1,000) shares of common capital stock of the par value of one cent (\$0.01) each.

**ARTICLE V**

The address of its registered office is One Lincoln Centre, 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240 and the name of its registered agent at such address is Joseph Wm. Foran.

ARTICLE VI

The number of directors of this corporation shall be not less than one (1) nor more than nine (9), the exact number to be fixed from time to time in the manner provided in the Bylaws of the corporation. The number of directors constituting the current Board of Directors is one (1), and the name and address of such person who is to serve as director until the next annual meeting of the shareholders or until his/her successor is elected and qualified is:

Name  
Joseph Wm. Foran

Address  
One Lincoln Centre  
5400 LBJ Freeway, Suite 1500  
Dallas, Texas 75240

The Board of Directors shall have the power to alter, amend or repeal the Bylaws of the corporation or to adopt new Bylaws.

ARTICLE VII

The Board of Directors of the corporation, in its sole discretion, shall have the power, on behalf of the corporation, to indemnify persons for whom indemnification is permitted by applicable Texas law, to the fullest extent permissible under applicable Texas law, and may purchase such liability, indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The corporation may purchase and maintain liability, indemnification and/or other similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Article VII shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, the Certificate of Formation and/or Bylaws of the corporation, contract, other agreement, vote or otherwise.

#### ARTICLE VIII

No contract or other transaction between this corporation and any person, firm, association or corporation and no act of this corporation, shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of this corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the corporation or to any shareholder or creditor thereof for any loss incurred by this corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.

ARTICLE IX

No member of the Board of Directors of the corporation shall be liable, personally or otherwise, in any way to the corporation or its shareholders for monetary damages caused in any way by an act or omission occurring in the director's capacity as a director of the corporation, except as otherwise expressly provided by applicable Texas law.

ARTICLE X

Any action required by the TBOC to be taken at any annual or special meeting of the shareholders of the corporation, and/or any action that may be taken at any annual or special meeting of the shareholders of the corporation, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

**MATADOR PRODUCTION COMPANY**

## AMENDED AND RESTATED BYLAWS

## ARTICLE I

## OFFICES

Section 1.01 Registered Office. The registered office of the corporation shall be located at such place within the State of Texas as the board of directors may from time to time determine.

Section 1.02 Other Offices. The corporation may also have offices at such other places, either within or without the State of Texas, as the board of directors may from time to time determine or as the business of the corporation may require.

## ARTICLE II

## MEETINGS OF SHAREHOLDERS

Section 2.01 Location. All annual meetings of shareholders shall be held at the offices of the corporation in the City of Dallas, County of Dallas, State of Texas, or at such other place, within or without the State of Texas, as may be designated by the board of directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof. All special meetings of shareholders shall be held at such location, within or without the State of Texas, as may be designated by the board of directors or as may be stated in the notice of the meeting or in a duly executed waiver of notice thereof. The board of directors may determine that a meeting may be held solely by means of remote communication in accordance with Texas law.

Section 2.02 Annual Meetings. Annual meetings of shareholders shall be held at such time and date as may be designated by the board of directors, at which the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

Section 2.03 Special Meetings. Special meetings of the shareholders may be called by the president or the chief executive officer (if any) and shall be called by the president, the chief executive officer (if any), the board of directors or the holders of not less than one-tenth (1/10) of all the shares entitled to vote at the meeting. Business transacted at any special meeting shall be confined to the purposes stated in the notice thereof.

Section 2.04 Notice. Written or printed notice stating the place, day and hour of the meeting, the means of any remote communications by which shareholders may be considered present and may vote at the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days nor more than sixty (60) days before the day of the meeting, either personally, by electronic transmission or by mail, by or at the direction of the president, the secretary or the officer or person calling the meeting, to each shareholder entitled to vote at such meeting.

Section 2.05 Quorum. The holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at meetings of shareholders except as otherwise provided in the Amended and Restated Certificate of Formation, as amended from time to time ("Certificate of Formation") in accordance with applicable provisions of the Texas Business Organizations Code, as amended, (the "TBOC"). Unless otherwise provided in the Certificate of Formation, once a quorum is present at a meeting of the shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting by any shareholder or the refusal of any shareholder represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting. Unless otherwise provided in the Certificate of Formation, the shareholders represented in person or by proxy at any meeting of the shareholders at which a quorum is not present may adjourn the meeting until such time and to such place as may be determined by a vote of the holders of a majority of the shares represented in person or by proxy at that meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 2.06 Votes Required for Action. With respect to any matter, other than the election of directors or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by the TBOC, the affirmative vote of the holders of a majority of the shares entitled to vote on that matter and represented in person or by proxy at a meeting of shareholders at which a quorum is present shall be the act of the shareholders, unless otherwise provided by the Certificate of Formation in accordance with the TBOC. Unless otherwise provided in the Certificate of Formation in accordance with the TBOC, directors shall be elected by a plurality of the votes cast by the holders of shares entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present.

Section 2.07 Voting Rights. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class are limited or denied by the Certificate of Formation or the TBOC.

Section 2.08 Proxies. A shareholder may vote in person or by proxy executed in writing by the shareholder. A telegram, telex, cablegram or other form of electronic transmission including telephone transmission, by the shareholder, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the shareholder shall be treated as an execution in writing for purposes of this Section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

Section 2.09 List of Shareholders. The officer or agent having charge of the stock transfer books shall make, at least ten (10) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and number of shares held by each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office or principal place of business of the corporation and shall be subject to inspection by any shareholder at any time during the usual business hours. Alternatively, the list of the shareholders may be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. This Section does not require the corporation to include any electronic contact information of any shareholder on the list. If the corporation elects to make the list available on an electronic network, the corporation shall take reasonable steps to ensure that the information is available only to shareholders of the corporation. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. If the meeting is held by means of remote communication, the list must be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer book or to vote at any such meeting of shareholders.

Section 2.10 Closing of Share Transfer Records and Fixing Record Date for Matters Other than Consents to Action. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of the shareholders), the board of directors may provide that the share transfer records shall be closed for a stated period not to exceed, in any case, sixty (60) days. If the share transfer records shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such records shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the share transfer records, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty (60) days, and, in case of a meeting of shareholders, not less than ten (10) days, prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, the date on which the notice of the meeting is mailed or given or the date on which the resolutions of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.



Section 2.11 Fixing Record Dates for Consents to Action. Unless a record date shall previously have been fixed or determined pursuant to Section 2.10 or this Section 2.11 of these bylaws, whenever action by shareholders is proposed to be taken by consent in writing without a meeting of the shareholders, the board of directors may fix a record date for the purpose of determining shareholders entitled to consent to that action, which record date shall not precede, and shall not be more than ten (10) days after, the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors and the prior action of the board of directors is not required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded, with such delivery made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, with such delivery addressed to the president of the corporation. If no record date shall have been fixed by the board of directors and prior action of the board of directors is required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts a resolution taking such prior action.

Section 2.12 Action Without Meeting.

(1) Any action required by law to be taken at a meeting of the shareholders, and/or any action that may be taken at a meeting of the shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent of the shareholders shall bear the date of signature of each shareholder who signs the consent. No written consent shall be effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the corporation as provided below, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of the shareholders are recorded. Such delivery shall be made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, shall be addressed to the president of the corporation.

(3) A telegram, telex, cablegram, or other electronic transmission by a shareholder consenting to an action to be taken is considered to be written, signed, and dated for the purposes of this Section if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the shareholder and the date on which the shareholder transmitted the transmission. The date of transmission is the date on which the consent was signed. Consent given by telegram, telex, cablegram, or other electronic transmission may not

be considered delivered until the consent is reproduced in paper form and the paper form is delivered to the corporation at its registered office in this state or its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded. Notwithstanding Subsection (2) of this Section, consent given by telegram, telex, cablegram, or other electronic transmission may be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded to the extent and in the manner provided by resolution of the board of directors of the corporation. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a shareholder may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing.

(4) Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

Section 2.13 Telephone or Remote Communication Meetings. Shareholders may participate in and hold a meeting by means of conference telephone or other means of remote communication equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened if (i) the corporation implements reasonable measures to verify that each person considered present and permitted to vote at the meeting by means of remote communication is a shareholder; (ii) the corporation implements reasonable measures to provide the shareholders at the meeting by means of remote communication a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of a meeting substantially concurrently with the proceedings; and (iii) the corporation maintains a record of any shareholder vote or other action taken at the meeting by means of remote communication.

Section 2.14 Minutes. The shareholders shall keep regular minutes of their proceedings, and such minutes shall be placed in the minute book of the corporation.

### ARTICLE III

#### DIRECTORS

Section 3.01 Management. The powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of its board of directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or by the Certificate of Formation or by these bylaws directed or required to be exercised and done by the shareholders.

Section 3.02 Number; Election; Term; Qualification; Removal. The number of directors of the corporation shall be such number as shall be from time to time specified by resolution of the board of directors; provided, however, that no director's term shall be shortened by reason of a

resolution reducing the number of directors; and further provided that the number of directors constituting the initial board of directors shall be one (1), and shall remain at such number unless and until changed by resolution of the board of directors as aforesaid. The directors shall be elected at the annual meeting of the shareholders, except as provided in Section 3.03, and each director elected shall hold office for the term for which he is elected and until his successor is elected and qualified. Directors need not be residents of the State of Texas or shareholders of the corporation. Any director may be removed at any time, with or without cause, at a special meeting of the shareholders called for that purpose.

Section 3.03 Resignations; Vacancies. A director may resign at any time by giving notice in writing or by electronic transmission to the board of directors. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors (or by the sole remaining director) though less than a quorum of the board of directors, or may be filled by an election at an annual or special meeting of the shareholders called for that purpose; provided, however, that if the vacancy is caused by reason of an increase in the number of directors, the board of directors may vote to fill not more than two such directorships during the period between any two successive annual meetings of shareholders. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office, or until the next election of one or more directors by shareholders if the vacancy is caused by an increase in the number of directors.

Section 3.04 Location of Meetings. Meetings of the board of directors, regular or special, may be held either within or without the State of Texas.

Section 3.05 First Meeting of New Board. The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the shareholders at the annual meeting, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the shareholders to fix the time and place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the shareholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

Section 3.06 Regular Meetings. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

Section 3.07 Special Meetings. Special meetings of the board of directors may be called by the president or the chief executive officer (if any) and shall be called by the president, chief executive (if any) or secretary on the written request of one (1) director. Written notice of special meetings of the board of directors shall be given to each director at least three (3) days before the date of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 3.08 Quorum; Votes Required. A majority of the directors shall constitute a quorum for the transaction of business and the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is required by law, the Certificate of Formation or these bylaws. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 3.09 Action Without Meeting. Any action required or permitted to be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all of the members of the board of directors or the committee, as the case may be. A telegram, telex, cablegram, or other electronic transmission by a director consenting to an action to be taken and transmitted by a director is considered written, signed, and dated for the purposes of this article if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the director and the date on which the director transmitted the transmission. Such consent shall have the same force and effect as a unanimous vote at a meeting of the board of directors or the committee, as the case may be, duly called and held.

Section 3.10 Participation in Meetings by Remote Communication. Directors and committee members may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons. If voting is to take place at the meeting, reasonable measures shall be implemented to verify that every director or committee member voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 3.11 Committees of Directors. The board of directors may designate from among its members one or more committees, each of which shall be comprised of one or more of its members, and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified members at any meeting of that committee. Any such committee, to the extent provided in the resolution of the board of directors, shall have and may exercise all of the authority of the board of directors in the business and affairs of the corporation except where the action of the board of directors is required, or the authority of such committee is limited, by statute. The number of members on each committee may be increased or decreased from time to time by resolution of the board of directors. Any member of any committee may be removed from such committee at any time by resolution of the board of directors. Vacancies in the membership of a committee (whether by death, resignation,

removal or otherwise) may be filled by resolution of the board of directors. The time, place and notice (if any) of meetings of any committee shall be determined by such committee. At meetings of any committee, a majority of the number of members of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee, except as otherwise specifically provided by statute, the Certificate of Formation, or these bylaws. If a quorum is not present at a meeting of any committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Each committee shall keep regular minutes of its proceedings and report the same to the board of directors when required. The designation of any such committee of the board of directors and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

Section 3.12 Compensation of Directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of committees of the board may be allowed like compensation for attending committee meetings.

Section 3.13 Minutes. The board of directors shall keep regular minutes of its proceedings, and such minutes shall be placed in the minute book of the corporation.

## ARTICLE IV

### NOTICES

Section 4.01 General. Notices to shareholders, directors and committee members shall be in writing and may be delivered personally or mailed by U.S. mail, postage prepaid, to the shareholders, directors or committee members, respectively, at their addresses appearing on the books and share transfer records of the corporation. Notice to shareholders shall be deemed to be given at the time when the same shall be so delivered or mailed. Notice to directors and committee members may also be given by nationally recognized overnight delivery or courier service, and shall be deemed given when such notice shall be received by the proper recipient or, if earlier, (i) in the case of an overnight delivery or courier service, one (1) day after such notice is sent by such overnight delivery or courier service; (ii) in the case of telegraph, when deposited at a telegraph office for transmission and all appropriate fees therefor have been paid; and (iii) in the case of mailing by U.S. mail, three (3) days after such notice is mailed as described above. On consent of a shareholder, director or committee member, notice from the corporation may be given to the shareholder, director or committee member by electronic transmission. The shareholder, director or committee member may specify the form of electronic transmission to be used to communicate notice. The shareholder, director or committee member may revoke this consent by written notice to the corporation. The consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the person responsible for delivering notice on behalf of the corporation knows that delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of

consent does not invalidate a meeting or other action. Notice by electronic transmission is deemed given when the notice is (i) transmitted to a facsimile number provided by the shareholder, director or committee member for the purpose of receiving notice; (ii) transmitted to an electronic mail address provided by the shareholder, director or committee member for the purpose of receiving notice; (iii) posted on an electronic network and a message is sent to the shareholder, director or committee member at the address provided by the shareholder, director or committee member for the purpose of alerting the shareholder, director or committee member of a posting; or (iv) communicated to the shareholder, director or committee member by any other form of electronic transmission consented to by the shareholder, director or committee member.

Section 4.02 Waivers. Whenever any notice is required to be given to any shareholder, director or committee member under the provisions of law or of the Certificate of Formation or of these bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. The business to be transacted at a regular or special meeting of the shareholders, directors, or members of a committee of directors or the purpose of a meeting is not required to be specified in a written waiver of notice or a waiver by electronic transmission unless required by the Certificate of Formation.

Section 4.03 Attendance as Waiver. Attendance of a director or member of a committee at a meeting shall constitute a waiver of notice of such meeting, except where a director or committee member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.04 Omission of Notice to Shareholders. Any notice required to be given to any shareholder under any provision of the TBOC, the Certificate of Formation or these bylaws need not be given to the shareholder if (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a twelve (12) month period have been mailed to that person, addressed at his address as shown on the share transfer records of the corporation, and have been returned undeliverable. Any action or meeting taken or held without notice to such a person shall have the same force and effect as if the notice had been duly given. If such a person delivers to the corporation a written notice setting forth his then current address, the requirement that notice be given to that person shall be reinstated.

## ARTICLE V

### OFFICERS

Section 5.01 General. The officers of the corporation shall consist of a president and a secretary and may also include a chairman of the board, a chief executive officer, a vice chairman of the board, one or more vice presidents, one or more assistant secretaries, and a treasurer and one or more assistant treasurers, each of whom shall be elected by the board of directors. The chairman and vice chairman of the board, if any, shall each be members of the board of directors, but no other officers of the corporation need be a director. Any two or more offices may be held by the same person.

Section 5.2 Election of Officers; Salaries. At the first meeting of the board of directors after each annual meeting of shareholders, the board of directors shall choose a president and a secretary. Such other officers and assistant officers and agents as may be deemed necessary may also be elected or appointed by the board of directors. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.

Section 5.03 Term of Office. The officers of the corporation shall hold office until their respective successors are chosen and qualify. Any officer or agent who is elected or appointed by the board of directors may be removed by the board of directors at any time, if, in the judgment of the board of directors, the best interests of the corporation will be served thereby; provided, that such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancy occurring in any office of the corporation (whether by death, resignation, removal or otherwise) shall be filled by resolution of the board of directors.

Section 5.04 Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as chairman of the board. The chairman of the board, if any, shall preside at meetings of the shareholders and of the board of directors, shall be an ex officio member of all committees, and shall have such other powers and perform such other duties as the board of directors may from time to time prescribe.

Section 5.05 Vice-Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as vice-chairman of the board. The vice-chairman of the board, if any, shall in the absence of the chairman of the board perform the duties and exercise the powers of the chairman of the board, and shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.06 President. The president shall be the chief executive officer of the corporation, shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect. In the event the board of directors shall not have designated a chairman of the board, or in the absence of the chairman of the board, the president shall preside at meetings of the shareholders and the board of directors. The president may sign and execute contracts, agreements and other documents on behalf of the corporation, and may sign and execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation. In addition, the president shall have such other powers and perform such other duties as shall be designated by the board of directors from time to time.

Section 5.07 Chief Executive Officer. If the corporation has a chief executive officer, the chief executive officer shall be the chief executive officer of the corporation and shall have all of the authority, powers and duties provided for or reserved to the president in Section 5.06 in lieu of the president, and the president shall be the chief operating officer of the corporation charged with the duty and power to manage the operations of the business of the corporation but subject to the overall direction of the chief executive officer and the board of directors. In addition, all references to the

president in Sections 5.09 through 5.12 shall be deemed instead to be references to the chief executive officer. In the absence or disability of the chief executive officer, or in the event of his inability or refusal to act, the president shall perform the duties and have the authority and exercise the powers of the chief executive officer.

Section 5.08 Vice Presidents. The vice presidents, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the president, perform the duties and exercise the powers of the president. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.09 Secretary. The secretary shall attend all meetings of the board of directors and all meetings of the shareholders and record all the proceedings of the meetings of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for any committees when required. The secretary shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. The secretary shall keep in safe custody the seal of the corporation and, when authorized by the board of directors, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of an assistant secretary, the treasurer or an assistant treasurer.

Section 5.10 Assistant Secretaries. The assistant secretaries, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.11 Treasurer. The treasurer, if any, shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. In the absence of the election or appointment of a treasurer or any assistant treasurers by the board of directors, the duties of the office of treasurer shall be performed by the secretary of the corporation. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the president and the board of directors at its regular meetings or when the board of directors so requires an account of all his transactions as treasurer and of the financial condition of the corporation. If required by the board of directors, he shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 5.12 Assistant Treasurers. The assistant treasurers, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of



the treasurer, perform the duties and exercise the powers of the treasurer. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

## ARTICLE VI

### SHARES OF STOCK

Section 6.01 Certificates. The corporation shall deliver certificates representing all shares to which shareholders are entitled; and such certificates shall be signed by the president or a vice president, and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. Each certificate representing shares shall state upon the face thereof that the corporation is organized under the laws of the State of Texas, the name of the person to whom issued, the number and class and the designation of the series, if any, that such certificate represents, and the par value of each share represented by such certificate or a statement that the shares are without par value.

Section 6.02 Issuance; Payment. Shares (both treasury and authorized but unissued) may be issued for such consideration (not less than par value in the case of authorized but unissued shares) and to such persons as the board of directors may from time to time determine. Consideration for the issuance of shares may be paid in whole or in part, in money or other property, tangible or intangible, and/or by labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed fully paid and nonassessable. Neither promissory notes nor future services shall constitute payment or part payment to the corporation for shares. In the absence of fraud in the transaction, the good faith determination of the board of directors as to the value of the consideration received for shares shall be conclusive. No certificate shall be issued for any share or shares until the consideration therefor has been fully paid.

Section 6.03 Shares of More than One Class. If the corporation is authorized to issue shares of more than one class, each certificate representing shares issued by the corporation (1) shall conspicuously set forth on the face or back of the certificate a full statement of (a) all of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued and, (b) if the corporation is authorized to issue shares of any preferred or special class in series, the variations in the relative rights and preferences of the shares of each such series to the extent they have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series; or (2) shall conspicuously state on the face or back of the certificate that (a) such a statement is set forth in the Certificate of Formation on file in the office of the Secretary of State and (b) the corporation will furnish a copy of such statement to the record holder of the certificate without charge on written request to the corporation at its principal place of business or registered office.

Section 6.04 Signatures. The signatures of the president, chairman of the board or vice president and the secretary or any assistant secretary upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of the issuance.

Section 6.05 Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

Section 6.06 Transfer of Certificates. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6.07 Restriction of Transfer of Shares. If the corporation issues any shares that are not registered under the Securities Act of 1933, as amended, and registered or qualified under any applicable state securities laws, the transfer of any such shares shall be restricted in accordance with the following legend, or a similar legend, which shall be conspicuously set forth on the face or on the back of each certificate representing such shares:

“The shares of stock represented by this certificate have not been registered under the Securities Act of 1933, as amended (the ‘Act’), or registered or qualified under the securities laws of any state, and the holder hereof cannot make any sale, assignment or other transfer of any shares of such stock except pursuant to an offering of such shares duly registered under the Act and registered or qualified under any applicable state securities laws, or under such other circumstances as in the opinion of counsel for or satisfactory to the issuer shall not, at the time, require registration under the Act and/or registration or qualification under any state securities law. Also said shares are ‘restricted securities’ within the meaning of Rule 144 promulgated by the Securities and Exchange Commission under the Act and may be subject to the limitations and reporting requirements of said rule upon resale or other disposition thereof.”

In the event any restriction on the transfer, or registration of the transfer, of shares shall be imposed or agreed to by the corporation, each certificate representing shares so restricted (1) shall conspicuously set forth a full or summary statement of the restriction on the face of the certificate, or (2) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate, or (3) shall conspicuously state on the face or back of the certificate that such a restriction exists pursuant to a specified document and (a) that the corporation will furnish to the record holder of the certificate a copy of the specified document without charge upon

written request to the corporation at its principal place of business or registered office, or (b) if such document is one required or permitted by law to be and has been so filed, that such specified document is on file in the office of the Secretary of State and contains a full statement of such restriction.

Section 6.08 Registered Holders of Shares. Unless otherwise provided in the TBOC, and subject to the provisions of Chapter 8 - Investment Securities of the Texas Business and Commerce Code, as amended:

(1) The corporation may regard the person in whose name any shares of the corporation are registered in the share transfer records of the corporation at any particular time (including, without limitation, as of a record date fixed pursuant to Section 2.10 or 2.11 of these bylaws) as the owner of those shares at that time for purposes of voting those shares, receiving distributions thereon or notices in respect thereof, transferring those shares, exercising rights of dissent with respect to those shares, exercising or waiving any preemptive rights with respect to those shares, entering into any agreements with respect to those shares in accordance with the TBOC, or giving proxies with respect to those shares; and

(2) Neither the corporation nor any of its officers, directors, employees or agents shall be liable for regarding that person as the owner of those shares at that time for those purposes, regardless of whether that person does not possess a certificate representing those shares.

## ARTICLE VII

### INDEMNIFICATION

Section 7.01 General. The corporation shall indemnify persons for whom indemnification is permitted by the TBOC to the fullest extent permissible under the TBOC, and may purchase such indemnification insurance as the board of directors from time to time shall determine.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.01 Dividends. The board of directors may declare and the corporation may pay dividends on its outstanding shares in cash, property or its own shares pursuant to law and subject to the provisions of its articles of incorporation.

Section 8.02 Reserves. The board of directors may by resolution create a reserve or reserves out of surplus for any proper purpose or purposes, and may modify or abolish any such reserve in the same manner.

Section 8.03 Books and Records. The corporation shall keep books and records of account and shall keep minutes of the proceedings of all meetings of the shareholders, the board of directors and each committee of the board of directors. The corporation shall keep at its registered office or, whether within or outside the state of Texas, at its principal place of business or at the office of its

transfer agent or registrar, a record of the original issuance of shares issued by the corporation and a record of each transfer of those shares that have been presented to the corporation for registration of transfer. Such records shall contain the names and addresses of all past and current shareholders and the number and class of shares issued by the corporation held by each of them. Any books, records, minutes and share transfer records may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 8.04 Report to Shareholders. The board of directors must, when requested by the holders of at least one-third (1/3) of the outstanding shares of the corporation, present to the shareholders written reports giving a full and clear statement of the business and condition of the corporation, including a reasonably detailed balance sheet and income statement.

Section 8.05 Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 8.06 Fiscal Year. The fiscal year of the corporation shall be fixed by the resolution of the board of directors.

Section 8.07 Seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Texas." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 8.8 Construction. Whenever the context or circumstances so require, for all terms used herein the masculine shall include the feminine and neuter, and the singular shall include the plural, and vice versa. If any provision of these bylaws shall be held illegal, invalid or inoperative, then, so far as is reasonable and possible (1) the remainder of the bylaws shall be and remain legal, valid and operative and (2) effect shall be given the intent manifested by the provision held illegal, invalid or inoperative and to that end, such illegal, invalid or inoperative provision shall be deemed to have been replaced by a provision that is as similar to such illegal, invalid or inoperative provision as possible and still be legal, valid and operative.

Section 8.9 Headings. Headings used in these bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation of the substantive provisions of these bylaws.

Section 8.10 Emergencies. Notwithstanding any other provision of these bylaws to the contrary, during an emergency period following major catastrophe resulting in the loss by death, mental or physical incapacity or otherwise, or the isolation of members of the board of directors or officers of the corporation, a majority of the remaining directors (who have not been rendered incapable of acting by death, physical or mental incapacity, isolation or otherwise) shall constitute a quorum of the board of directors and shall have the power, by majority vote, (1) to fill vacancies on the board of directors and to elect and appoint officers of the corporation; (2) to call special meetings of the shareholders; and (3) to carry on any and all other corporate business. During such emergency period reasonable attempts shall be made to give notice to directors, but actions taken at a meeting held during such period shall not be rendered invalid solely because of failure to give notice as otherwise required.

ARTICLE IX

AMENDMENT OF BYLAWS

Section 9.01 General. These bylaws may be altered, amended or repealed or new bylaws may be adopted at any meeting of the board of directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting), subject to repeal or change at any meeting of the shareholders at which a quorum is present, by the affirmative vote of a majority of the shareholders present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting).

**SECOND AMENDED AND RESTATED CERTIFICATE OF FORMATION  
OF  
MRC ENERGY COMPANY**

The undersigned hereby certifies that:

**ONE:** The name of the corporation is MRC Energy Company (the "Corporation"). The Corporation filed its original Articles of Incorporation with the Secretary of State of the State of Texas on July 3, 2003 under the name "Matador Resources Company" (the "Original Articles"). The Corporation filed an Amended and Restated Certificate of Formation with the Secretary of State of the State of Texas on June 3, 2010 (the "Amended Certificate"), amending and restating the Original Articles in their entirety. The Corporation filed a Certificate of Amendment to its Amended Certificate with the Secretary of State of the State of Texas on June 9, 2011, amending the number of directors of the Corporation. The Corporation filed a Certificate of Merger with the Secretary of State of the State of Texas on August 8, 2011, pursuant to which Matador Merger Co., a Texas corporation, merged with and into the Corporation and the Corporation changed its name from "Matador Resources Company" to "MRC Energy Company", changed the amount of authorized capital stock and added a provision regarding approval of certain actions.

**TWO:** This Second Amended and Restated Certificate of Formation amends the Amended Certificate, as such has from time to time been amended (the "Current Certificate") and all amendments made herein are in compliance with the Texas Business Organization Code (the "TBOC").

**THREE:** Each amendment herein has been properly approved in the manner prescribed by Sections 10.005 and 21.052 through 21.055 of the TBOC and by the Corporation's governing documents.

**FOUR:** The following alterations have been made to the Current Certificate in this Second Amended and Restated Certificate of Formation:

- (1) ARTICLE V, ARTICLE VI and ARTICLE VII of the Current Certificate are hereby deleted in their entirety;
- (2) ARTICLE VIII of the Current Certificate is hereby renamed "ARTICLE V";

(3) ARTICLE IX of the Current Certificate is hereby amended and restated in its entirety so as to read as follows:

“ARTICLE VI

The number of directors of this Corporation shall be not less than one (1) nor more than nine (9), the exact number to be fixed from time to time in the manner provided in the Bylaws of the Corporation. The current number of directors constituting the Board of Directors is seven (7), and the names and addresses of such directors are:

<u>Name</u>	<u>Address</u>
Joseph Wm. Foran	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240
Stephen A. Holditch	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240
David M. Laney	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240
Gregory E. Mitchell	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240
Steven W. Ohnimus	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240
Michael C. Ryan	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240
Margaret B. Shannon	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240;”

(4) ARTICLE X of the Current Certificate is hereby amended and restated in its entirety so as to read as follows:

“ARTICLE VII

The Board of Directors of the Corporation, in its sole discretion, shall have the power, on behalf of the Corporation, to indemnify persons for whom indemnification is permitted by applicable Texas law, to the fullest extent permissible under applicable Texas law, and may purchase such liability, indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The Corporation may purchase and maintain liability, indemnification and/or other similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the Corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the Corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Article VII shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, the Certificate of Formation and/or Bylaws of the Corporation, contract, other agreement, vote or otherwise.”;

(5) ARTICLE XI of the Current Certificate is hereby amended and restated in its entirety so as to read as follows:

“ARTICLE VIII

No contract or other transaction between this Corporation and any person, firm, association or corporation and no act of this Corporation, shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of this Corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the Corporation or to any shareholder or creditor thereof for any loss incurred by this Corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.”;

(6) ARTICLE XII of the Current Certificate is hereby renamed “ARTICLE IX”;



(7) A new ARTICLE X shall be added thereto, which shall be and read in its entirety as follows:

“ARTICLE X

Any action required by the TBOC to be taken at any annual or special meeting of the shareholders of the Corporation, and/or any action that may be taken at any annual or special meeting of the shareholders of the Corporation, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.”

**FIVE:** This Second Amended and Restated Certificate of Formation accurately states the text of the Current Certificate, as further amended by this Second Amended and Restated Certificate of Formation.

**SIX:** This Second Amended and Restated Certificate of Formation does not contain any other change in the Current Certificate other than omissions allowed by Section 3.059 of the TBOC.

**SEVEN:** The Amended and Restated Certificate of Formation of the Corporation is hereby amended and restated to read in its entirety as follows:

**SECOND AMENDED AND RESTATED CERTIFICATE OF FORMATION  
OF  
MRC ENERGY COMPANY**

ARTICLE I

The name of the Corporation is MRC Energy Company.

ARTICLE II

The Corporation is a for-profit corporation.

ARTICLE III

The purpose for which the Corporation is organized is the transaction of any or all lawful business for which for-profit corporations may be incorporated under the Texas Business Organizations Code (the “TBOC”).

ARTICLE IV

The aggregate number of shares that the Corporation shall have authority to issue shall be one thousand (1,000) shares of Common Stock, par value \$.01 per share.

ARTICLE V

The address of the Corporation’s registered office is 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240 and the name of its registered agent at such address is Joseph Wm. Foran.

ARTICLE VI

The number of directors of this Corporation shall be not less than one (1) nor more than nine (9), the exact number to be fixed from time to time in the manner provided in the Bylaws of the Corporation. The current number of directors constituting the Board of Directors is seven (7), and the names and addresses of such directors are:

<u>Name</u>	<u>Address</u>
Joseph Wm. Foran	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240
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Michael C. Ryan	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240
Margaret B. Shannon	One Lincoln Centre 5400 LBJ Freeway, Suite 1500 Dallas, Texas 75240

ARTICLE VII

The Board of Directors of the Corporation, in its sole discretion, shall have the power, on behalf of the Corporation, to indemnify persons for whom indemnification is permitted by applicable Texas law, to the fullest extent permissible under applicable Texas law, and may purchase such liability, indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The Corporation may purchase and maintain liability, indemnification and/or other similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the Corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the Corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Article VII shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, the Certificate of Formation and/or Bylaws of the Corporation, contract, other agreement, vote or otherwise.

#### ARTICLE VIII

No contract or other transaction between this Corporation and any person, firm, association or corporation and no act of this Corporation, shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of this Corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the Corporation or to any shareholder or creditor thereof for any loss incurred by this Corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.

#### ARTICLE IX

In accordance with Section 10.005 of the TBOC, any act or transaction by or involving this Corporation, other than the election or removal of directors, that requires for its approval under the TBOC or the governing documents of the Corporation the approval of the shareholders of this Corporation shall, by virtue of this reference to Section 10.005 of the TBOC, require, in addition, the approval of the shareholders of Matador Resources Company (formerly known as Matador Holdco, Inc.), a Texas corporation, or any successor thereto by merger, by the same vote that is required by the TBOC and the governing documents of this Corporation.

ARTICLE X

Any action required by the TBOC to be taken at any annual or special meeting of the shareholders of the Corporation, and/or any action that may be taken at any annual or special meeting of the shareholders of the Corporation, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

IN WITNESS WHEREOF, I have hereunto set my hand, this 13th day of October, 2011.

/s/ Joseph Wm. Foran  
Joseph Wm. Foran  
Chief Executive Officer

Signature Page to MRC Energy Company  
Second Amended and Restated Certificate of Formation

## MRC ENERGY COMPANY

SECOND AMENDED AND RESTATED BYLAWS

## ARTICLE I

## OFFICES

Section 1.01 Registered Office. The registered office of the corporation shall be located at such place within the State of Texas as the board of directors may from time to time determine. The initial registered office of the corporation shall be as specified in the Certificate of Formation of the corporation.

Section 1.02 Other Offices. The corporation may also have offices at such other places, either within or without the State of Texas, as the board of directors may from time to time determine or as the business of the corporation may require.

## ARTICLE II

## MEETINGS OF SHAREHOLDERS

Section 2.01 Location. All annual meetings of shareholders shall be held at the offices of the corporation in the City of Dallas, County of Dallas, State of Texas, or at such other place, within or without the State of Texas, as may be designated by the board of directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof. All special meetings of shareholders shall be held at such location, within or without the State of Texas, as may be designated by the board of directors or as may be stated in the notice of the meeting or in a duly executed waiver of notice thereof. The board of directors may determine that a meeting will have no designated location because it is to be held solely by means of a conference telephone or other communication system authorized in Section 2.13 of these Bylaws.

Section 2.02 Annual Meetings. Annual meetings of shareholders shall be held at such time and date as may be designated by the board of directors, at which the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

Section 2.03 Special Meetings. Special meetings of the shareholders may be called by the president, the board of directors or the holders of not less than ten percent (10%) of all shares entitled to vote at the meeting. Business transacted at any special meeting shall be confined to the purposes stated in the notice thereof.

Section 2.04 Notice. Written or printed notice stating the location, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the day of the meeting, either personally, by electronic transmission or by mail, by or at the direction of the president, the secretary or the officer or person calling the meeting, to each shareholder entitled to vote at such meeting. If the meeting is held solely by using a conference telephone or other communication system authorized by Section 2.13 of these Bylaws, no location for the meeting need be specified in the notice of the meeting. If the meeting is held solely or in part by using a

conference telephone or other communication system authorized by Section 2.13, the form of communication system to be used for the meeting and the means for accessing the communication system must be stated in the notice.

Section 2.05 Quorum. The holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at meetings of shareholders except as otherwise provided in the Certificate of Formation in accordance with Section 21.358 of the Texas Business Organizations Code, as amended (the "TBOC"). Unless otherwise provided in the Certificate of Formation, once a quorum is present at a meeting of the shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting by any shareholder or the refusal of any shareholder represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting. Unless otherwise provided in the Certificate of Formation, the shareholders represented in person or by proxy at any meeting of the shareholders at which a quorum is not present may adjourn the meeting until such time and to such place as may be determined by a vote of the holders of a majority of the shares represented in person or by proxy at that meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 2.06 Votes Required for Action. With respect to any matter, other than the election of directors or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by the TBOC, the affirmative vote of the holders of a majority of the shares entitled to vote on that matter and represented in person or by proxy at a meeting of shareholders at which a quorum is present shall be the act of the shareholders, unless otherwise provided by the Certificate of Formation in accordance with the TBOC. Unless otherwise provided in the Certificate of Formation in accordance with the TBOC, directors shall be elected by a plurality of the votes cast by the holders of shares entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present.

Section 2.07 Voting Rights. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class are limited or denied by the Certificate of Formation or the TBOC.

Section 2.08 Proxies. A shareholder may vote in person or by proxy executed in writing by the shareholder. A telegram, telex, cablegram or other form of electronic transmission, including telephonic transmission, by the shareholder, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the shareholder is considered an execution in writing for purposes of this Section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

Section 2.09 List of Shareholders. The officer or agent having charge of the stock transfer books shall prepare, not later than the eleventh (11<sup>th</sup>) day before the date of each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the type and number of shares held by each shareholder, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office or principal place of business of the corporation and shall be subject to inspection by any shareholder at any time during the usual business hours. Alternatively, the list of the shareholders may be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. This Section does not require the corporation to include any electronic contact information of any shareholder on the list. If the corporation elects to make the list available on an electronic network, the corporation shall take reasonable steps to ensure that the information is available only to shareholders of the corporation. The list of shareholders shall be produced and kept open at the meeting and shall be subject to the inspection of any shareholder during regular business hours. If the meeting is held by means of remote communication, the list must be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting. The original share transfer records shall be prima facie evidence of the shareholders entitled to examine such list or transfer records or to vote at any such meeting of shareholders.

Section 2.10 Closing of Share Transfer Records and Fixing Record Date for Matters Other than Consents to Action. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of the shareholders), the board of directors may provide that the share transfer records shall be closed for a stated period not to exceed, in any case, sixty (60) days. If the share transfer records shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such records shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the share transfer records, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty (60) days, and, in case of a meeting of shareholders, not less than ten (10) days, prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, the date on which the notice of the meeting is mailed or given or the date on which the resolutions of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.



Section 2.11 Fixing Record Dates for Consents to Action. Unless a record date shall previously have been fixed or determined pursuant to Section 2.10 or this Section 2.11 of these Bylaws, whenever action by shareholders is proposed to be taken by consent in writing without a meeting of the shareholders, the board of directors may fix a record date for the purpose of determining shareholders entitled to consent to that action, which record date shall not precede, and shall not be more than ten (10) days after, the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors and the prior action of the board of directors is not required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded, with such delivery made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, with such delivery addressed to the president of the corporation. If no record date shall have been fixed by the board of directors and prior action of the board of directors is required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts a resolution taking such prior action.

Section 2.12 Action Without Meeting.

(1) Any action required by law to be taken at a meeting of the shareholders, and/or any action that may be taken at a meeting of the shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent of the shareholders shall bear the date of signature of each shareholder who signs the consent. No written consent solicited on behalf of a person other than the corporation or the board of directors shall be effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the corporation as provided below, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of the shareholders are recorded. Such delivery shall be made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, shall be addressed to the president of the corporation.

(3) A telegram, telex, cablegram, or other electronic transmission by a shareholder consenting to an action to be taken is considered to be written, signed and dated for the purposes of this Section if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the shareholder and the date

on which the shareholder transmitted the transmission. The date of transmission is the date on which the consent was signed. Consent given by telegram, telex, cablegram, or other electronic transmission may not be considered delivered until the consent is reproduced in paper form and the paper form is delivered to the corporation at its registered office in this state or its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded. Notwithstanding Subsection (2) of this Section, consent given by telegram, telex, cablegram or other electronic transmission may be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded to the extent and in the manner provided by resolution of the board of directors of the corporation. Any photographic, photostatic, facsimile or similarly reliable reproduction of a consent in writing signed by a shareholder may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing.

(4) Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

Section 2.13 Telephone or Remote Communication Meetings. Shareholders may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every shareholder voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 2.14 Minutes. The shareholders shall keep regular minutes of their proceedings, and such minutes shall be placed in the minute book of the corporation.

### ARTICLE III

### DIRECTORS

Section 3.01 Management. The powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, its board of directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or by the Certificate of Formation or by these Bylaws directed or required to be exercised and done by the shareholders.

Section 3.02 Number; Election; Term; Qualification; Removal. The number of directors of the corporation shall be such number as shall be from time to time specified by resolution of the board of directors; provided, however, that no director's term shall be shortened by reason of

a resolution reducing the number of directors. The directors shall be elected at the annual meeting of the shareholders, except as provided in Section 3.03, and each director elected shall hold office for the term for which he is elected and until his successor is elected and qualified. Directors need not be residents of the State of Texas or shareholders of the corporation. Any director may be removed at any time, with or without cause, at a special meeting of the shareholders called for that purpose.

Section 3.03 Resignations; Vacancies. A director may resign at any time by giving written notice to the board of directors or the chairman of the board. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors (or by the sole remaining director) though less than a quorum of the board of directors, or may be filled by an election at an annual or special meeting of the shareholders called for that purpose; provided, however, that if the vacancy is caused by reason of an increase in the number of directors, the board of directors may vote to fill not more than two such directorships during the period between any two successive annual meetings of shareholders. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office, or until the next election of one or more directors by shareholders if the vacancy is caused by an increase in the number of directors.

Section 3.04 Location of Meetings. Meetings of the board of directors, regular or special, may be held either within or without the State of Texas.

Section 3.05 First Meeting of New Board. The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the shareholders at the annual meeting, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the shareholders to fix the time and place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the shareholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

Section 3.06 Regular Meetings. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

Section 3.07 Special Meetings. Special meetings of the board of directors may be called by the chairman of the board or the president and shall be called by the secretary on the written request of any director. Written notice of special meetings of the board of directors shall be given to each director at least three (3) days before the date of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 3.08 Quorum; Votes Required. A majority of the directors shall constitute a quorum for the transaction of business and the act of the majority of the directors present at a

meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is required by law or the Certificate of Formation. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 3.09 Action Without Meeting. The board of directors or committee of the board of directors may take action without holding a meeting, providing notice, or taking a vote if each director or member of the committee entitled to vote on the action signs a written consent or consents stating the action taken. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a director or member of the committee may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing. Advance notice is not required to be given to take an action by written consent. Such consent shall have the same force and effect as a unanimous vote at a meeting of the board of directors or the committee, as the case may be, duly called and held.

Section 3.10 Telephone Meetings. Directors and committee members may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every director or committee member voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 3.11 Committees of Directors. The board of directors, by resolution adopted by a majority of the whole board, may designate from among its members one or more committees, each of which shall be comprised of one or more of its members, and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified members at any meeting of that committee. Any such committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the board of directors in the business and affairs of the corporation except where the action of the board of directors is required, or the authority of such committee is limited, by statute. The number of members on each committee may be increased or decreased from time to time by resolution of the board of directors. Any member of any committee may be removed from such committee at any time by resolution of the board of directors. Vacancies in the membership of a committee (whether by death, resignation, removal or otherwise) may be filled by resolution of the board of directors. The time, place and notice (if any) of meetings of any committee shall be determined by such committee. At meetings of any committee, a majority of the number of members of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee, except as otherwise specifically provided

by statute, the Certificate of Formation or these Bylaws. If a quorum is not present at a meeting of any committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Each committee shall keep regular minutes of its proceedings and report the same to the board when required. The designation of any such committee of the board of directors and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

Section 3.12 Compensation of Directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of committees of the board may be allowed like compensation for attending committee meetings.

Section 3.13 Minutes. The board of directors shall keep regular minutes of its proceedings, and such minutes shall be placed in the minute book of the corporation.

#### ARTICLE IV

##### NOTICES

Section 4.01 General. Notices to shareholders, directors and committee members shall be in writing and may be delivered personally or mailed by U.S. mail, postage prepaid, to the shareholders, directors or committee members, respectively, at their addresses appearing on the books and share transfer records of the corporation. Notice to shareholders shall be deemed to be given at the time when the same shall be so delivered or mailed. Notice to directors and committee members may also be given by nationally recognized overnight delivery or courier service, facsimile transmission or telegram, and shall be deemed given when such notice shall be received by the proper recipient or, if earlier, (i) in the case of an overnight delivery or courier service, one (1) day after such notice is sent by such overnight delivery or courier service; (ii) in the case of telegraph, when deposited at a telegraph office for transmission and all appropriate fees therefor have been paid; and (iii) in the case of mailing by U.S. mail, three (3) days after such notice is mailed as described above. On consent of a shareholder, director or committee member, notice from the corporation may be given to the shareholder, director or committee member by electronic transmission. The shareholder, director or committee member may specify the form of electronic transmission to be used to communicate notice. The shareholder, director or committee member may revoke this consent by written notice to the corporation. The consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the person responsible for delivering notice on behalf of the corporation knows that delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of consent does not invalidate a meeting or other action. Notice by electronic transmission is deemed given when the notice is (i) transmitted to a facsimile number provided by the shareholder, director or committee member for the purpose of receiving notice; (ii) transmitted to an electronic mail address provided by the shareholder, director or committee member for the purpose of receiving notice; (iii) posted on an electronic network and a message is sent to the shareholder, director or

committee member at the address provided by the shareholder, director or committee member for the purpose of alerting the shareholder, director or committee member of a posting; or (iv) communicated to the shareholder, director or committee member by any other form of electronic transmission consented to by the shareholder, director or committee member.

Section 4.02 Waivers. Whenever any notice is required to be given to any shareholder, director or committee member under the provisions of law or of the Certificate of Formation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 4.03 Attendance as Waiver. Attendance of a director or member of a committee at a meeting shall constitute a waiver of notice of such meeting, except where a director or committee member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.04 Omission of Notice to Shareholders. Any notice required to be given to any shareholder under any provision of the TBOC, the Certificate of Formation or these Bylaws need not be given to the shareholder if (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a twelve (12) month period have been mailed to that person, addressed at his address as shown on the share transfer records of the corporation, and have been returned undeliverable. Any action or meeting taken or held without notice to such a person shall have the same force and effect as if the notice had been duly given. If such a person delivers to the corporation a written notice setting forth his then current address, the requirement that notice be given to that person shall be reinstated.

## ARTICLE V

### OFFICERS

Section 5.01 General. The officers of the corporation shall consist of a president and a secretary and may also include a chairman of the board, a vice-chairman of the board, one or more vice presidents, one or more assistant secretaries and a treasurer and one or more assistant treasurers, each of whom shall be elected by the board of directors. The chairman and vice-chairman of the board, if any, shall each be members of the board of directors, but no other officers of the corporation need be a director. Any two or more offices may be held by the same person.

Section 5.2 Election of Officers; Salaries. At the first meeting of the board of directors after each annual meeting of shareholders, the board of directors shall choose a president and a secretary. Such other officers and assistant officers and agents as may be deemed necessary may also be elected or appointed by the board of directors. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.

Section 5.03 Term of Office. The officers of the corporation shall hold office until their respective successors are chosen and qualify. Any officer or agent who is elected or appointed

by the board of directors may be removed by the board of directors at any time, if, in the judgment of the board of directors, the best interests of the corporation will be served thereby; provided, that such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancy occurring in any office of the corporation (whether by death, resignation, removal or otherwise) shall be filled by resolution of the board of directors.

Section 5.04 Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as chairman of the board. The chairman of the board, if any, shall preside at meetings of the shareholders and of the board of directors, shall be an ex officio member of all committees, and shall have such other powers and perform such other duties as the board of directors may from time to time prescribe.

Section 5.05 Vice-Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as vice-chairman of the board. The vice-chairman of the board, if any, shall in the absence of the chairman of the board perform the duties and exercise the powers of the chairman of the board, and shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.06 President. The president shall be the chief executive officer of the corporation, shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect. In the event the board of directors shall not have designated a chairman of the board, or in the absence of the chairman of the board, the president shall preside at meetings of the shareholders and the board of directors. The president may sign and execute contracts, agreements and other documents on behalf of the corporation, and may sign and execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation. In addition, the president shall have such other powers and perform such other duties as shall be designated by the board of directors from time to time.

Section 5.07 Vice Presidents. The vice presidents, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the president, perform the duties and exercise the powers of the president. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.08 Secretary. The secretary shall attend all meetings of the board of directors and all meetings of the shareholders and record all the proceedings of the meetings of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for any committees when required. The secretary shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. The secretary shall keep in safe custody the seal of the corporation and, when authorized by the board of directors, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of an assistant secretary, the treasurer or an assistant treasurer.

Section 5.09 Assistant Secretaries. The assistant secretaries, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.10 Treasurer. The treasurer, if any, shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. In the absence of the election or appointment of a treasurer or any assistant treasurers by the board of directors, the duties of the office of treasurer shall be performed by the secretary of the Corporation. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the president and the board of directors at its regular meetings or when the board of directors so requires an account of all his transactions as treasurer and of the financial condition of the corporation. If required by the board of directors, he shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 5.11 Assistant Treasurers. The assistant treasurers, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

## ARTICLE VI

### SHARES OF STOCK

Section 6.01 Certificates. The corporation shall deliver certificates representing all shares to which shareholders are entitled; and such certificates shall be signed by the president or a vice president, and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. Each certificate representing shares shall state upon the front thereof that the corporation is organized under the laws of the State of Texas, the name of the person to whom issued, the number and class and the designation of the series, if any, that such certificate represents, and the par value of each share represented by such certificate or a statement that the shares are without par value.

Section 6.02 Issuance; Payment. Shares (both treasury and authorized but unissued) may be issued for such consideration (not less than par value in the case of authorized but unissued shares) and to such persons as the board of directors may from time to time authorize. Consideration for the issuance of shares may consist of any type of consideration permitted under the TBOC. Shares may not be issued until the consideration for which the shares are to be



issued shall have been paid or delivered as required in connection with the authorization of the shares. When the consideration is paid or delivered, such shares shall be considered to be issued and fully paid and nonassessable, and the subscriber or other person entitled to receive the shares shall be a shareholder with respect to the shares. In the absence of fraud in the transaction, the judgment of the board of directors is conclusive in determining the value and sufficiency of the consideration received for the shares.

Section 6.03 Shares of More than One Class. If the corporation is authorized to issue shares of more than one class or series, each certificate representing shares issued by the corporation shall conspicuously state on the front or back of the certificate (1) the designations, preferences, limitations and relative rights of the shares of each class or series to the extent they have been determined and the authority of the board of directors to make those determinations as to subsequent series; or (2) that the information required by clause (1) is stated in the Certificate of Formation on file in the office of the Secretary of State and that the corporation will furnish a free copy of that information to the record holder of the certificate on written request to the corporation at its principal place of business or registered office.

Section 6.04 Signatures. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation in the same manner and with the same effect as if he or she were such officer at the date of the issuance.

Section 6.05 Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

Section 6.06 Transfer of Certificates. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6.07 Restriction of Transfer of Shares. If the corporation issues any shares that are not registered under the Securities Act of 1933, as amended, and registered or qualified under any applicable state securities laws, the transfer of any such shares shall be restricted in accordance with the following legend, which legend (or a substantively similar legend) shall be conspicuously set forth on the front or back of each certificate representing such shares:

“The shares of stock represented by this certificate have not been registered under the Securities Act of 1933, as amended (the ‘Act’), or registered or qualified under the securities laws of any state, and the holder hereof cannot make any sale, assignment or other transfer of any shares of such stock except pursuant to an offering of such shares duly registered under the Act and registered or qualified under any applicable state securities laws, or under such other circumstances as in the opinion of counsel for or satisfactory to the issuer shall not, at the time, require registration under the Act and/or registration or qualification under any state securities law. Also said shares are ‘restricted securities’ within the meaning of Rule 144 promulgated by the Securities and Exchange Commission under the Act and may be subject to the limitations and reporting requirements of said rule upon resale or other disposition thereof.”

In the event any restriction on the transfer, or registration of the transfer, of shares shall be imposed or agreed to by the corporation, each certificate representing shares so restricted (1) shall conspicuously set forth a full or summary statement of the restriction on the front of the certificate, or (2) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the front of the certificate, or (3) shall conspicuously state on the front or back of the certificate that such a restriction exists pursuant to a specified document and (a) that the corporation will furnish to the record holder of the certificate a free copy of the specified document upon written request to the corporation at its principal place of business or registered office, or (b) if such document has been filed in accordance with the TBOC, that such document is on file in the office of the Secretary of State and contains a full statement of such restriction.

Section 6.08 Registered Holders of Shares. Unless otherwise provided in the TBOC, and subject to the provisions of Chapter 8 - Investment Securities of the Texas Business and Commerce Code, as amended:

(1) The corporation may consider the person registered as the owner of a share in the share transfer records of the corporation at any particular time (including, without limitation, as of a record date fixed pursuant to Section 2.10 or 2.11 of these Bylaws) as the owner of that share at that time for purposes of voting that share, receiving distributions or notices in respect thereof, transferring the share, exercising rights of dissent with respect to that share, exercising or waiving any preemptive right with respect to that share, entering into any agreements with respect to that share in accordance with the TBOC or giving proxies with respect to that share; and

(2) Neither the corporation nor any of its officers, directors, employees or agents shall be liable for regarding that person as the owner of that share at that time for those purposes, regardless of whether that person does not possess a certificate representing that share.

## ARTICLE VII

### INDEMNIFICATION

Section 7.01 General. The corporation shall indemnify persons for whom indemnification is permitted by the TBOC to the fullest extent permissible under the TBOC, and may purchase such indemnification insurance as the board of directors from time to time shall determine.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01 Dividends. The board of directors may declare and the corporation may pay dividends on its outstanding shares in cash, property or its own shares pursuant to law and subject to the provisions of its Certificate of Formation.

Section 8.02 Reserves. The board of directors may by resolution create a reserve or reserves out of surplus for any proper purpose or purposes, and may modify or abolish any such reserve in the same manner.

Section 8.03 Books and Records. The corporation shall keep books and records of account and shall keep minutes of the proceedings of the shareholders, the board of directors and each committee of the board of directors. The corporation shall keep at its registered office or, whether within or outside the state of Texas, at its principal place of business or at the office of its transfer agent or registrar, a current record of the original issuance of shares issued by the corporation and a record of each transfer of those shares that have been presented to the corporation for registration of transfer. Such records shall contain the names and mailing addresses of all past and current shareholders and the number and class or series of shares issued by the corporation held by each of them. Any books, records, minutes and share transfer records may be in written paper form or in any other form capable of being converted into written paper form within a reasonable time.

Section 8.04 Report to Shareholders. The board of directors must, when requested by the holders of at least one-third (1/3) of the outstanding shares of the corporation, present to the shareholders written reports giving a full and clear statement of the business and condition of the corporation, including a reasonably detailed balance sheet and income statement.

Section 8.05 Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 8.06 Fiscal Year. The fiscal year of the corporation shall be fixed by the resolution of the board of directors.

Section 8.07 Seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Texas." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 8.08 Construction. Whenever the context or circumstances so require, for all terms used herein the masculine shall include the feminine and neuter, and the singular shall include the plural, and vice versa. If any provision of these Bylaws shall be held illegal, invalid or inoperative, then, so far as is reasonable and possible (1) the remainder of these Bylaws shall

be and remain legal, valid and operative and (2) effect shall be given the intent manifested by the provision held illegal, invalid or inoperative and to that end, such illegal, invalid or inoperative provision shall be deemed to have been replaced by a provision that is as similar to such illegal, invalid or inoperative provision as possible and still be legal, valid and operative.

Section 8.09 Headings. Headings used in these Bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation of the substantive provisions of these Bylaws.

ARTICLE IX  
AMENDMENT OF BYLAWS

Section 9.01 General. These Bylaws may be altered, amended or repealed or new bylaws may be adopted at any meeting of the board of directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting), subject to repeal or change at any meeting of the shareholders at which a quorum is present, by the affirmative vote of a majority of the shareholders present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting).

The undersigned secretary of MRC Energy Company hereby certifies that the foregoing Bylaws were duly adopted by written consent of the board of directors as of October 17<sup>th</sup>, 2011.

/s/ Joseph Wm. Foran

Joseph Wm. Foran

**CERTIFICATE OF FORMATION**  
**OF**  
**MRC DRILLING COMPANY**

I, the undersigned person, having the capacity to contract, acting as organizer of a for-profit corporation under the Texas Business Organizations Code (the "Code"), do hereby adopt the following Certificate of Formation for such corporation:

1. The type of entity being formed is a for-profit corporation.
2. The name of the corporation is MRC Drilling Company.
3. The corporation is formed for the purpose of engaging in any lawful act, activity and/or business for which corporations may be formed under the Code.
4. The aggregate number of shares that the corporation shall have authority to issue is One Thousand (1,000) shares of common capital stock, par value one cent (\$0.01) per share.
5. The address of its initial registered office is One Lincoln Centre, 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240, and the name of its initial registered agent at such address is Joseph Wm. Foran.
6. The number of directors of this corporation shall be not less than one (1) nor more than nine (9), the exact number to be fixed from time to time in the manner provided in the Bylaws of the corporation. The number of directors constituting the initial Board of Directors is one (1), and the name and address of such person who is to serve as director until the first annual meeting of the shareholders or until his successor is elected and qualified are:

Name  
Joseph Wm. Foran

Address  
One Lincoln Centre  
5400 LBJ Freeway  
Suite 1500  
Dallas, Texas 75240

The Board of Directors shall have the power to alter, amend or repeal the Bylaws of the corporation or to adopt new Bylaws.

7. The name and address of the organizer is:

Name  
Daryl B. Robertson

Address  
1445 Ross Avenue  
Suite 3700  
Dallas, Texas 75202

8. The Board of Directors of the corporation, in its sole discretion, shall have the power, on behalf of the corporation, to indemnify persons for whom indemnification is permitted by applicable Texas law, to the fullest extent permissible under applicable Texas law, and may purchase such liability, indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The corporation may purchase and maintain liability, indemnification and/or other similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Section 8 shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, the governing documents of the corporation, contract, other agreement, vote or otherwise.

9. No contract or other transaction between this corporation and any person, firm, association or corporation and no act of this corporation, shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of this corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the corporation or to any shareholder or creditor thereof for any loss incurred by this corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.

10. No member of the Board of Directors of the corporation shall be liable, personally or otherwise, in any way to the corporation or its shareholders for monetary damages caused in any way by an act or omission occurring in the director's capacity as a director of the corporation, except as otherwise expressly provided by applicable Texas law.

11. Any action required by the Code to be taken at any annual or special meeting of the shareholders of the corporation, and/or any action that may be taken at any annual or special meeting of the shareholders of the corporation, may be taken without a meeting, without prior

notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

IN WITNESS WHEREOF, I have hereunto set my hand, this 6<sup>th</sup> day of January, 2006.

/s/ Daryl B. Robertson

Daryl B. Robertson

**DISCLAIMER**

I, the undersigned, being the organizer of MRC Drilling Company, a corporation being formed by the filing of this Certificate of Formation with the Secretary of State of the State of Texas, do hereby disclaim any and all interests in said corporation.

/s/ Daryl B. Robertson

Daryl B. Robertson



**CERTIFICATE OF MERGER**  
**OF**  
**RANCHITO OPERATING CO., INC., a Texas corporation**  
**WITH AND INTO**  
**MRC DRILLING COMPANY, a Texas corporation**

Pursuant to Chapter 10 of the Texas Business Organizations Code, Ranchito Operating Co., Inc., a Texas corporation, and MRC Drilling Company, a Texas corporation, adopt the following Certificate of Merger.

1. The name, type of entity, state of incorporation and file number issued by the Secretary of State of the State of Texas for each of the companies participating in the merger are as follows:

<u>Name of Entity</u>	<u>Type of Entity</u>	<u>State</u>	<u>File Number</u>
Ranchito Operating Co., Inc.	For Profit Corporation	Texas	800639905
MRC Drilling Company	For Profit Corporation	Texas	800596124

2. MRC Drilling Company, a Texas corporation is the surviving entity (the “*Survivor*”).
3. Ranchito Operating Co., Inc., a Texas corporation is the disappearing entity (the “*Target*”).
4. An Agreement and Plan of Merger providing for the merger of the Target with and into Survivor, resulting in Survivor being the surviving corporation in the merger (the “*Merger*”) has been approved as required by the laws of Texas and by the governing documents of the Target and the Survivor.
5. The Certificate of Formation and the Bylaws of the Survivor prior to the Merger will be the Certificate of Formation and the Bylaws of the surviving domestic corporation, *except that* the Agreement and Plan of Merger amends the Certificate of Formation and Bylaws of the Survivor to effect a name change of the surviving corporation. Section 2 of the Certificate of Formation of the Survivor shall be deleted in its entirety and replaced with a new Section 2 which shall read in its entirety as follows:  
“2. The name of the corporation is MRC Permian Company.”
6. An executed Agreement and Plan of Merger is on file at the principal place of business of the Survivor located at 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240; and a copy of the Agreement and Plan of Merger will be furnished by the Survivor, on written request and without cost, to any owner of each corporation that is a party to or created by the Agreement and Plan of Merger and to any creditor or obligee of the parties of the Merger at the time of the Merger if such obligation is then outstanding.
7. The Survivor shall be responsible for the payment of all fees and franchise taxes and will be obligated to pay such fees and franchise taxes if the same are not timely paid.

8. The Merger was authorized by the Survivor, which took all actions required by Texas law and its governing documents.
9. The Merger was authorized by the Target, which took all actions required by Texas law and its governing documents.
10. The Merger is to be effective when this Certificate of Merger is filed by the Secretary of State of Texas.

IN WITNESS WHEREOF, this Certificate of Merger is dated the 30<sup>th</sup> day of October, 2006.

RANCHITO OPERATING CO., INC.,  
A Texas corporation

By: /s/ Joseph Wm. Foran  
Joseph Wm. Foran  
President and Chief Executive Officer

MRC DRILLING COMPANY,  
A Texas corporation

By: /s/ Matthew V. Hairford  
Matthew V. Hairford  
Vice President - Operations

## MRC PERMIAN COMPANY

BYLAWS

## ARTICLE I

## OFFICES

Section 1.01 Registered Office. The registered office of the corporation shall be located at such place within the State of Texas as the Board of Directors may from time to time determine. The initial registered office of the corporation shall be as specified in the Certificate of Formation of the corporation.

Section 1.02 Other Offices. The corporation may also have offices at such other places, either within or without the State of Texas, as the board of directors may from time to time determine or as the business of the corporation may require.

## ARTICLE II

## MEETINGS OF SHAREHOLDERS

Section 2.01 Location. All annual meetings of shareholders shall be held at the offices of the corporation in the City of Dallas, County of Dallas, State of Texas, or at such other place, within or without the State of Texas, as may be designated by the board of directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof. All special meetings of shareholders shall be held at such location, within or without the State of Texas, as may be designated by the board of directors or as may be stated in the notice of the meeting or in a duly executed waiver of notice thereof. The board of directors may determine that a meeting will have no designated location because it is to be held solely by means of a conference telephone or other communication system authorized in Section 2.13 of these Bylaws.

Section 2.02 Annual Meetings. Annual meetings of shareholders shall be held at such time and date as may be designated by the Board of Directors, at which the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

Section 2.03 Special Meetings. Special meetings of the shareholders may be called by the president, the board of directors or the holders of not less than ten percent (10%) of all shares entitled to vote at the meeting. Business transacted at any special meeting shall be confined to the purposes stated in the notice thereof.

Section 2.04 Notice. Written or printed notice stating the location, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the day of the meeting, either personally, by electronic transmission or by mail, by or at the direction of the president, the secretary or the officer or person calling the meeting, to each shareholder entitled to vote at such meeting. If the meeting is held solely by using a conference telephone or other

communication system authorized by Section 2.13 of these Bylaws, no location for the meeting need be specified in the notice of the meeting. If the meeting is held solely or in part by using a conference telephone or other communication system authorized by Section 2.13, the form of communication system to be used for the meeting and the means for accessing the communication system must be stated in the notice.

Section 2.05 Quorum. The holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at meetings of shareholders except as otherwise provided in the Certificate of Formation in accordance with Section 21.358 of the Texas Business Organizations Code, as amended (the "TBOC"). Unless otherwise provided in the Certificate of Formation, once a quorum is present at a meeting of the shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting by any shareholder or the refusal of any shareholder represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting. Unless otherwise provided in the Certificate of Formation, the shareholders represented in person or by proxy at any meeting of the shareholders at which a quorum is not present may adjourn the meeting until such time and to such place as may be determined by a vote of the holders of a majority of the shares represented in person or by proxy at that meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 2.06 Votes Required for Action. With respect to any matter, other than the election of directors or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by the TBOC, the affirmative vote of the holders of a majority of the shares entitled to vote on that matter and represented in person or by proxy at a meeting of shareholders at which a quorum is present shall be the act of the shareholders, unless otherwise provided by the Certificate of Formation in accordance with the TBOC. Unless otherwise provided in the Certificate of Formation in accordance with the TBOC, directors shall be elected by a plurality of the votes cast by the holders of shares entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present.

Section 2.07 Voting Rights. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class are limited or denied by the Certificate of Formation or the TBOC.

Section 2.08 Proxies. A shareholder may vote in person or by proxy executed in writing by the shareholder. A telegram, telex, cablegram or other form of electronic transmission, including telephonic transmission, by the shareholder, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the shareholder is considered an execution in writing for purposes of this Section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

Section 2.09 List of Shareholders. The officer or agent having charge of the stock transfer books shall prepare, not later than the eleventh (11<sup>th</sup>) day before the date of each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the type and number of shares held by each shareholder, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office or principal place of business of the corporation and shall be subject to inspection by any shareholder at any time during the usual business hours. Alternatively, the list of the shareholders may be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. This Section does not require the corporation to include any electronic contact information of any shareholder on the list. If the corporation elects to make the list available on an electronic network, the corporation shall take reasonable steps to ensure that the information is available only to shareholders of the corporation. The list of shareholders shall be produced and kept open at the meeting and shall be subject to the inspection of any shareholder during regular business hours. If the meeting is held by means of remote communication, the list must be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting. The original share transfer records shall be prima facie evidence of the shareholders entitled to examine such list or transfer records or to vote at any such meeting of shareholders.

Section 2.10 Closing of Share Transfer Records and Fixing Record Date for Matters Other than Consents to Action. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of the shareholders), the board of directors may provide that the share transfer records shall be closed for a stated period not to exceed, in any case, sixty (60) days. If the share transfer records shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such records shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the share transfer records, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty (60) days, and, in case of a meeting of shareholders, not less than ten (10) days, prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, the date on which the notice of the meeting is mailed or given or the date on which the resolutions of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.

Section 2.11 Fixing Record Dates for Consents to Action. Unless a record date shall previously have been fixed or determined pursuant to Section 2.10 or this Section 2.11 of these Bylaws, whenever action by shareholders is proposed to be taken by consent in writing without a meeting of the shareholders, the board of directors may fix a record date for the purpose of determining shareholders entitled to consent to that action, which record date shall not precede, and shall not be more than ten (10) days after, the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors and the prior action of the board of directors is not required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded, with such delivery made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, with such delivery addressed to the president of the corporation. If no record date shall have been fixed by the board of directors and prior action of the board of directors is required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts a resolution taking such prior action.

Section 2.12 Action Without Meeting.

(1) Any action required by law to be taken at a meeting of the shareholders, and/or any action that may be taken at a meeting of the shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent of the shareholders shall bear the date of signature of each shareholder who signs the consent. No written consent solicited on behalf of a person other than the corporation or the board of directors shall be effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the corporation as provided below, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of the shareholders are recorded. Such delivery shall be made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, shall be addressed to the president of the corporation.

(3) A telegram, telex, cablegram, or other electronic transmission by a shareholder consenting to an action to be taken is considered to be written, signed, and dated for the purposes of this Section if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the shareholder and the date on which the shareholder transmitted the transmission. The date of transmission is the date on which the consent was signed. Consent given by telegram, telex, cablegram, or other electronic transmission may not be considered delivered until the consent is reproduced in paper form and the paper form is delivered to the corporation at its registered office in this state or its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded. Notwithstanding Subsection (2) of this Section, consent given by telegram, telex, cablegram, or other electronic transmission may be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded to the extent and in the manner provided by resolution of the board of directors of the corporation. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a shareholder may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing.

(4) Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

Section 2.13 Telephone or Remote Communication Meetings. Shareholders may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every shareholder voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 2.14 Minutes. The shareholders shall keep regular minutes of their proceedings, and such minutes shall be placed in the minute book of the corporation.

### ARTICLE III

#### DIRECTORS

Section 3.01 Management. The powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, its board of directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or by the Certificate of Formation or by these Bylaws directed or required to be exercised and done by the shareholders.

Section 3.02 Number; Election; Term; Qualification; Removal. The number of directors of the corporation shall be such number as shall be from time to time specified by resolution of the board of directors; provided, however, that no director's term shall be shortened by reason of a resolution reducing the number of directors; and further provided that the number of directors constituting the initial board of directors shall be one (1), and shall remain at such number unless and until changed by resolution of the board of directors as aforesaid. The directors shall be elected at the annual meeting of the shareholders, except as provided in Section 3.03, and each director elected shall hold office for the term for which he is elected and until his successor is elected and qualified. Directors need not be residents of the State of Texas or shareholders of the corporation. Any director may be removed at any time, with or without cause, at a special meeting of the shareholders called for that purpose.

Section 3.03 Resignations; Vacancies. A director may resign at any time by giving written notice to the board of directors or the chairman of the board. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors (or by the sole remaining director) though less than a quorum of the board of directors, or may be filled by an election at an annual or special meeting of the shareholders called for that purpose; provided, however, that if the vacancy is caused by reason of an increase in the number of directors, the board of directors may vote to fill not more than two such directorships during the period between any two successive annual meetings of shareholders. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office, or until the next election of one or more directors by shareholders if the vacancy is caused by an increase in the number of directors.

Section 3.04 Location of Meetings. Meetings of the board of directors, regular or special, may be held either within or without the State of Texas.

Section 3.05 First Meeting of New Board. The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the shareholders at the annual meeting, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the shareholders to fix the time and place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the shareholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

Section 3.06 Regular Meetings. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

Section 3.07 Special Meetings. Special meetings of the board of directors may be called by the chairman of the board or the president and shall be called by the secretary on the written request of any director. Written notice of special meetings of the board of directors shall be given to each director at least three (3) days before the date of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.



Section 3.08 Quorum; Votes Required. A majority of the directors shall constitute a quorum for the transaction of business and the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is required by law or the Certificate of Formation. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 3.09 Action Without Meeting. The Board of Directors or committee of the Board of Directors may take action without holding a meeting, providing notice, or taking a vote if each director or member of the committee entitled to vote on the action signs a written consent or consents stating the action taken. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a director or member of the committee may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing. Advance notice is not required to be given to take an action by written consent. Such consent shall have the same force and effect as a unanimous vote at a meeting of the board of directors or the committee, as the case may be, duly called and held.

Section 3.10 Telephone Meetings. Directors and committee members may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every director or committee member voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 3.11 Committees of Directors. The board of directors, by resolution adopted by a majority of the whole board, may designate from among its members one or more committees, each of which shall be comprised of one or more of its members, and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified members at any meeting of that committee. Any such committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the board of directors in the business and affairs of the corporation except where the action of the board of directors is required, or the authority of such committee is limited, by statute. The number of members on each committee may be increased or decreased from time to time by resolution of the board of directors. Any member of any committee may be removed from such committee at any time by resolution of the board of directors. Vacancies in the membership of a committee (whether by death, resignation, removal or otherwise) may be

filled by resolution of the board of directors. The time, place and notice (if any) of meetings of any committee shall be determined by such committee. At meetings of any committee, a majority of the number of members of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee, except as otherwise specifically provided by statute, the Certificate of Formation, or these Bylaws. If a quorum is not present at a meeting of any committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Each committee shall keep regular minutes of its proceedings and report the same to the board when required. The designation of any such committee of the board of directors and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

Section 3.12 Compensation of Directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of committees of the board may be allowed like compensation for attending committee meetings.

Section 3.13 Minutes. The board of directors shall keep regular minutes of its proceedings, and such minutes shall be placed in the minute book of the corporation.

#### ARTICLE IV

##### NOTICES

Section 4.01 General. Notices to shareholders, directors and committee members shall be in writing and may be delivered personally or mailed by U.S. mail, postage prepaid, to the shareholders, directors or committee members, respectively, at their addresses appearing on the books and share transfer records of the corporation. Notice to shareholders shall be deemed to be given at the time when the same shall be so delivered or mailed. Notice to directors and committee members may also be given by nationally recognized overnight delivery or courier service, facsimile transmission or telegram, and shall be deemed given when such notice shall be received by the proper recipient or, if earlier, (i) in the case of an overnight delivery or courier service, one (1) day after such notice is sent by such overnight delivery or courier service; (ii) in the case of telegraph, when deposited at a telegraph office for transmission and all appropriate fees therefor have been paid; and (iii) in the case of mailing by U.S. mail, three (3) days after such notice is mailed as described above. On consent of a shareholder, director or committee member, notice from the corporation may be given to the shareholder, director or committee member by electronic transmission. The shareholder, director or committee member may specify the form of electronic transmission to be used to communicate notice. The shareholder, director or committee member may revoke this consent by written notice to the corporation. The consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the person responsible for delivering notice on behalf of the corporation knows that delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of consent does not

invalidate a meeting or other action. Notice by electronic transmission is deemed given when the notice is (i) transmitted to a facsimile number provided by the shareholder, director or committee member for the purpose of receiving notice; (ii) transmitted to an electronic mail address provided by the shareholder, director or committee member for the purpose of receiving notice; (iii) posted on an electronic network and a message is sent to the shareholder, director or committee member at the address provided by the shareholder, director or committee member for the purpose of alerting the shareholder, director or committee member of a posting; or (iv) communicated to the shareholder, director or committee member by any other form of electronic transmission consented to by the shareholder, director or committee member.

Section 4.02 Waivers. Whenever any notice is required to be given to any shareholder, director or committee member under the provisions of law or of the Certificate of Formation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 4.03 Attendance as Waiver. Attendance of a director or member of a committee at a meeting shall constitute a waiver of notice of such meeting, except where a director or committee member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.04 Omission of Notice to Shareholders. Any notice required to be given to any shareholder under any provision of the TBOC, the Certificate of Formation or these Bylaws need not be given to the shareholder if (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a twelve (12) month period have been mailed to that person, addressed at his address as shown on the share transfer records of the corporation, and have been returned undeliverable. Any action or meeting taken or held without notice to such a person shall have the same force and effect as if the notice had been duly given. If such a person delivers to the corporation a written notice setting forth his then current address, the requirement that notice be given to that person shall be reinstated.

## ARTICLE V

### OFFICERS

Section 5.01 General. The officers of the corporation shall consist of a president and a secretary and may also include a chairman of the board, a vice-chairman of the board, one or more vice presidents, one or more assistant secretaries, and a treasurer and one or more assistant treasurers, each of whom shall be elected by the board of directors. The chairman and vice-chairman of the board, if any, shall each be members of the board of directors, but no other officers of the corporation need be a director. Any two or more offices may be held by the same person.

Section 5.2 Election of Officers; Salaries. At the first meeting of the board of directors after each annual meeting of shareholders, the board of directors shall choose a president and a secretary. Such other officers and assistant officers and agents as may be deemed necessary may also be elected or appointed by the board of directors. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.

Section 5.03 Term of Office. The officers of the corporation shall hold office until their respective successors are chosen and qualify. Any officer or agent who is elected or appointed by the board of directors may be removed by the board of directors at any time, if, in the judgment of the board of directors, the best interests of the corporation will be served thereby; provided, that such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancy occurring in any office of the corporation (whether by death, resignation, removal or otherwise) shall be filled by resolution of the board of directors.

Section 5.04 Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as chairman of the board. The chairman of the board, if any, shall preside at meetings of the shareholders and of the board of directors, shall be an ex officio member of all committees, and shall have such other powers and perform such other duties as the board of directors may from time to time prescribe.

Section 5.05 Vice-Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as vice-chairman of the board. The vice-chairman of the board, if any, shall in the absence of the chairman of the board perform the duties and exercise the powers of the chairman of the board, and shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.06 President. The president shall be the chief executive officer of the corporation, shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect. In the event the board of directors shall not have designated a chairman of the board, or in the absence of the chairman of the board, the president shall preside at meetings of the shareholders and the board of directors. The president may sign and execute contracts, agreements and other documents on behalf of the corporation, and may sign and execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation. In addition, the president shall have such other powers and perform such other duties as shall be designated by the board of directors from time to time.

Section 5.07 Vice Presidents. The vice presidents, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the president, perform the duties and exercise the powers of the president. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.08 Secretary. The secretary shall attend all meetings of the board of directors and all meetings of the shareholders and record all the proceedings of the meetings of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for any committees when required. The secretary shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under

whose supervision he shall be. The secretary shall keep in safe custody the seal of the corporation and, when authorized by the board of directors, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of an assistant secretary, the treasurer or an assistant treasurer.

Section 5.09 Assistant Secretaries. The assistant secretaries, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.10 Treasurer. The treasurer, if any, shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. In the absence of the election or appointment of a treasurer or any assistant treasurers by the board of directors, the duties of the office of treasurer shall be performed by the secretary of the Corporation. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the president and the board of directors at its regular meetings or when the board of directors so requires an account of all his transactions as treasurer and of the financial condition of the corporation. If required by the board of directors, he shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 5.11 Assistant Treasurers. The assistant treasurers, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

## ARTICLE VI

### SHARES OF STOCK

Section 6.01 Certificates. The corporation shall deliver certificates representing all shares to which shareholders are entitled; and such certificates shall be signed by the president or a vice president, and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. Each certificate representing shares shall state upon the front thereof that the corporation is organized under the laws of the State of Texas, the name of the person to whom issued, the number and class and the designation of the series, if any, that such certificate represents, and the par value of each share represented by such certificate or a statement that the shares are without par value.

Section 6.02 Issuance; Payment. Shares (both treasury and authorized but unissued) may be issued for such consideration (not less than par value in the case of authorized but unissued shares) and to such persons as the board of directors may from time to time authorize. Consideration for the issuance of shares may consist of any type of consideration permitted under the TBOC. Shares may not be issued until the consideration for which the shares are to be issued shall have been paid or delivered as required in connection with the authorization of the shares. When the consideration is paid or delivered, such shares shall be considered to be issued and fully paid and nonassessable, and the subscriber or other person entitled to receive the shares shall be a shareholder with respect to the shares. In the absence of fraud in the transaction, the judgment of the board of directors is conclusive in determining the value and sufficiency of the consideration received for the shares.

Section 6.03 Shares of More than One Class. If the corporation is authorized to issue shares of more than one class or series, each certificate representing shares issued by the corporation shall conspicuously state on the front or back of the certificate (1) the designations, preferences, limitations and relative rights of the shares of each class or series to the extent they have been determined and the authority of the board of directors to make those determinations as to subsequent series; or (2) that the information required by clause (1) is stated in the Certificate of Formation on file in the office of the Secretary of State and that the corporation will furnish a free copy of that information to the record holder of the certificate on written request to the corporation at its principal place of business or registered office.

Section 6.04 Signatures. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation in the same manner and with the same effect as if he or she were such officer at the date of the issuance.

Section 6.05 Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

Section 6.06 Transfer of Certificates. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6.07 Restriction of Transfer of Shares. If the corporation issues any shares that are not registered under the Securities Act of 1933, as amended, and registered or qualified under any applicable state securities laws, the transfer of any such shares shall be restricted in accordance with the following legend, which legend (or a substantively similar legend) shall be conspicuously set forth on the front or back of each certificate representing such shares:

“The shares of stock represented by this certificate have not been registered under the Securities Act of 1933, as amended (the ‘Act’), or registered or qualified under the securities laws of any state, and the holder hereof cannot make any sale, assignment or other transfer of any shares of such stock except pursuant to an offering of such shares duly registered under the Act and registered or qualified under any applicable state securities laws, or under such other circumstances as in the opinion of counsel for or satisfactory to the issuer shall not, at the time, require registration under the Act and/or registration or qualification under any state securities law. Also said shares are ‘restricted securities’ within the meaning of Rule 144 promulgated by the Securities and Exchange Commission under the Act and may be subject to the limitations and reporting requirements of said rule upon resale or other disposition thereof.”

In the event any restriction on the transfer, or registration of the transfer, of shares shall be imposed or agreed to by the corporation, each certificate representing shares so restricted (1) shall conspicuously set forth a full or summary statement of the restriction on the front of the certificate, or (2) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the front of the certificate, or (3) shall conspicuously state on the front or back of the certificate that such a restriction exists pursuant to a specified document and (a) that the corporation will furnish to the record holder of the certificate a free copy of the specified document upon written request to the corporation at its principal place of business or registered office, or (b) if such document has been filed in accordance with the TBOC, that such document is on file in the office of the Secretary of State and contains a full statement of such restriction.

Section 6.08 Registered Holders of Shares. Unless otherwise provided in the TBOC, and subject to the provisions of Chapter 8 - Investment Securities of the Texas Business and Commerce Code, as amended:

(1) The corporation may consider the person registered as the owner of a share in the share transfer records of the corporation at any particular time (including, without limitation, as of a record date fixed pursuant to Section 2.10 or 2.11 of these Bylaws) as the owner of that share at that time for purposes of voting that share, receiving distributions or notices in respect thereof, transferring the share, exercising rights of dissent with respect to that share, exercising or waiving any preemptive right with respect to that share, entering into any agreements with respect to that share in accordance with the TBOC, or giving proxies with respect to that share; and

(2) Neither the corporation nor any of its officers, directors, employees or agents shall be liable for regarding that person as the owner of that share at that time for those purposes, regardless of whether that person does not possess a certificate representing that share.

ARTICLE VII

INDEMNIFICATION

Section 7.01 General. The corporation shall indemnify persons for whom indemnification is permitted by the TBOC to the fullest extent permissible under the TBOC, and may purchase such indemnification insurance as the Board of Directors from time to time shall determine.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01 Dividends. The board of directors may declare and the corporation may pay dividends on its outstanding shares in cash, property or its own shares pursuant to law and subject to the provisions of its Certificate of Formation.

Section 8.02 Reserves. The board of directors may by resolution create a reserve or reserves out of surplus for any proper purpose or purposes, and may modify or abolish any such reserve in the same manner.

Section 8.03 Books and Records. The corporation shall keep books and records of account and shall keep minutes of the proceedings of the shareholders, the board of directors and each committee of the board of directors. The corporation shall keep at its registered office or, whether within or outside the state of Texas, at its principal place of business or at the office of its transfer agent or registrar, a current record of the original issuance of shares issued by the corporation and a record of each transfer of those shares that have been presented to the corporation for registration of transfer. Such records shall contain the names and mailing addresses of all past and current shareholders and the number and class or series of shares issued by the corporation held by each of them. Any books, records, minutes and share transfer records may be in written paper form or in any other form capable of being converted into written paper form within a reasonable time.

Section 8.04 Report to Shareholders. The board of directors must, when requested by the holders of at least one-third (1/3) of the outstanding shares of the corporation, present to the shareholders written reports giving a full and clear statement of the business and condition of the corporation, including a reasonably detailed balance sheet and income statement.

Section 8.05 Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 8.06 Fiscal Year. The fiscal year of the corporation shall be fixed by the resolution of the board of directors.

Section 8.07 Seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Texas." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.



Section 8.08 Construction. Whenever the context or circumstances so require, for all terms used herein the masculine shall include the feminine and neuter, and the singular shall include the plural, and vice versa. If any provision of these Bylaws shall be held illegal, invalid or inoperative, then, so far as is reasonable and possible (1) the remainder of the Bylaws shall be and remain legal, valid and operative and (2) effect shall be given the intent manifested by the provision held illegal, invalid or inoperative and to that end, such illegal, invalid or inoperative provision shall be deemed to have been replaced by a provision that is as similar to such illegal, invalid or inoperative provision as possible and still be legal, valid and operative.

Section 8.09 Headings. Headings used in these Bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation of the substantive provisions of these Bylaws.

## ARTICLE IX

### AMENDMENT OF BYLAWS

Section 9.01 General. These Bylaws may be altered, amended or repealed or new bylaws may be adopted at any meeting of the board of directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting), subject to repeal or change at any meeting of the shareholders at which a quorum is present, by the affirmative vote of a majority of the shareholders present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting).

**CERTIFICATE OF FORMATION  
OF  
MRC ROCKIES COMPANY.**

I, the undersigned person, having the capacity to contract, acting as organizer of a for-profit corporation under the Texas Business Organizations Code (the "Code"), do hereby adopt the following Certificate of Formation for such corporation:

1. The type of entity being formed is a for-profit corporation.
2. The name of the corporation is MRC Rockies Company.
3. The corporation is formed for the purpose of engaging in any lawful act, activity and/or business for which corporations may be formed under the Code.
4. The aggregate number of shares that the corporation shall have authority to issue is One Thousand (1,000) shares of common capital stock, par value one cent (\$0.01) per share.
5. The address of its initial registered office is One Lincoln Centre, 5400 LBJ Freeway, Suite 1500, Dallas, Texas 75240, and the name of its initial registered agent at such address is Joseph Wm. Foran.
6. The number of directors of this corporation shall be not less than one (1) nor more than nine (9), the exact number to be fixed from time to time in the manner provided in the Bylaws of the corporation. The number of directors constituting the initial Board of Directors is one (1), and the name and address of such person who is to serve as director until the first annual meeting of the shareholders or until his/her successor is elected and qualified is:

Name  
Joseph Wm. Foran

Address  
One Lincoln Centre  
5400 LBJ Freeway  
Suite 1500  
Dallas, Texas 75240

The Board of Directors shall have the power to alter, amend or repeal the Bylaws of the corporation or to adopt new Bylaws.

7. The name and address of the organizer is:

Name  
Nathan P. Pekar

Address  
One Lincoln Centre  
5400 LBJ Freeway  
Suite 1500  
Dallas, Texas 75240

8. The Board of Directors of the corporation, in its sole discretion, shall have the power, on behalf of the corporation, to indemnify persons for whom indemnification is permitted by applicable Texas law, to the fullest extent permissible under applicable Texas law, and may purchase such liability, indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The corporation may purchase and maintain liability, indemnification and/or other similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Section 8 shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, the governing documents of the corporation, contract, other agreement, vote or otherwise.

9. No contract or other transaction between this corporation and any person, firm, association or corporation and no act of this corporation, shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of this corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the corporation or to any shareholder or creditor thereof for any loss incurred by this corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.

10. No member of the Board of Directors of the corporation shall be liable, personally or otherwise, in any way to the corporation or its shareholders for monetary damages caused in any way by an act or omission occurring in the director's capacity as a director of the corporation, except as otherwise expressly provided by applicable Texas law.

11. Any action required by the Code to be taken at any annual or special meeting of the shareholders of the corporation, and/or any action that may be taken at any annual or special meeting of the shareholders of the corporation, may be taken without a meeting, without prior

notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

IN WITNESS WHEREOF, I have hereunto set my hand, this 5<sup>th</sup> day of December, 2008.

/s/ Joseph Wm. Foran  
Joseph Wm. Foran, President



## MRC ROCKIES COMPANY

BYLAWS

## ARTICLE I

## OFFICES

Section 1.01 Registered Office. The registered office of the corporation shall be located at such place within the State of Texas as the Board of Directors may from time to time determine. The initial registered office of the corporation shall be as specified in the Certificate of Formation of the corporation.

Section 1.02 Other Offices. The corporation may also have offices at such other places, either within or without the State of Texas, as the board of directors may from time to time determine or as the business of the corporation may require.

## ARTICLE II

## MEETINGS OF SHAREHOLDERS

Section 2.01 Location. All annual meetings of shareholders shall be held at the offices of the corporation in the City of Dallas, County of Dallas, State of Texas, or at such other place, within or without the State of Texas, as may be designated by the board of directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof. All special meetings of shareholders shall be held at such location, within or without the State of Texas, as may be designated by the board of directors or as may be stated in the notice of the meeting or in a duly executed waiver of notice thereof. The board of directors may determine that a meeting will have no designated location because it is to be held solely by means of a conference telephone or other communication system authorized in Section 2.13 of these Bylaws.

Section 2.02 Annual Meetings. Annual meetings of shareholders shall be held at such time and date as may be designated by the Board of Directors, at which the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

Section 2.03 Special Meetings. Special meetings of the shareholders may be called by the president, the board of directors or the holders of not less than ten percent (10%) of all shares entitled to vote at the meeting. Business transacted at any special meeting shall be confined to the purposes stated in the notice thereof.

Section 2.04 Notice. Written or printed notice stating the location, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the day of the meeting, either personally, by electronic transmission or by mail, by or at the direction of the president, the secretary or the officer or person calling the meeting, to each shareholder entitled to vote at such meeting. If the meeting is held solely by using a conference telephone or other

communication system authorized by Section 2.13 of these Bylaws, no location for the meeting need be specified in the notice of the meeting. If the meeting is held solely or in part by using a conference telephone or other communication system authorized by Section 2.13, the form of communication system to be used for the meeting and the means for accessing the communication system must be stated in the notice.

Section 2.05 Quorum. The holders of a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at meetings of shareholders except as otherwise provided in the Certificate of Formation in accordance with Section 21.358 of the Texas Business Organizations Code, as amended (the "TBOC"). Unless otherwise provided in the Certificate of Formation, once a quorum is present at a meeting of the shareholders, the shareholders represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting by any shareholder or the refusal of any shareholder represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting. Unless otherwise provided in the Certificate of Formation, the shareholders represented in person or by proxy at any meeting of the shareholders at which a quorum is not present may adjourn the meeting until such time and to such place as may be determined by a vote of the holders of a majority of the shares represented in person or by proxy at that meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 2.06 Votes Required for Action. With respect to any matter, other than the election of directors or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by the TBOC, the affirmative vote of the holders of a majority of the shares entitled to vote on that matter and represented in person or by proxy at a meeting of shareholders at which a quorum is present shall be the act of the shareholders, unless otherwise provided by the Certificate of Formation in accordance with the TBOC. Unless otherwise provided in the Certificate of Formation in accordance with the TBOC, directors shall be elected by a plurality of the votes cast by the holders of shares entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present.

Section 2.07 Voting Rights. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class are limited or denied by the Certificate of Formation or the TBOC.

Section 2.08 Proxies. A shareholder may vote in person or by proxy executed in writing by the shareholder. A telegram, telex, cablegram or other form of electronic transmission, including telephonic transmission, by the shareholder, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the shareholder is considered an execution in writing for purposes of this Section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.



Section 2.09 List of Shareholders. The officer or agent having charge of the stock transfer books shall prepare, not later than the eleventh (11<sup>th</sup>) day before the date of each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the type and number of shares held by each shareholder, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office or principal place of business of the corporation and shall be subject to inspection by any shareholder at any time during the usual business hours. Alternatively, the list of the shareholders may be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. This Section does not require the corporation to include any electronic contact information of any shareholder on the list. If the corporation elects to make the list available on an electronic network, the corporation shall take reasonable steps to ensure that the information is available only to shareholders of the corporation. The list of shareholders shall be produced and kept open at the meeting and shall be subject to the inspection of any shareholder during regular business hours. If the meeting is held by means of remote communication, the list must be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting. The original share transfer records shall be prima facie evidence of the shareholders entitled to examine such list or transfer records or to vote at any such meeting of shareholders.

Section 2.10 Closing of Share Transfer Records and Fixing Record Date for Matters Other than Consents to Action. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of the shareholders), the board of directors may provide that the share transfer records shall be closed for a stated period not to exceed, in any case, sixty (60) days. If the share transfer records shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such records shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the share transfer records, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty (60) days, and, in case of a meeting of shareholders, not less than ten (10) days, prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution by the corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, the date on which the notice of the meeting is mailed or given or the date on which the resolutions of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.

Section 2.11 Fixing Record Dates for Consents to Action. Unless a record date shall previously have been fixed or determined pursuant to Section 2.10 or this Section 2.11 of these Bylaws, whenever action by shareholders is proposed to be taken by consent in writing without a meeting of the shareholders, the board of directors may fix a record date for the purpose of determining shareholders entitled to consent to that action, which record date shall not precede, and shall not be more than ten (10) days after, the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors and the prior action of the board of directors is not required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded, with such delivery made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, with such delivery addressed to the president of the corporation. If no record date shall have been fixed by the board of directors and prior action of the board of directors is required by the TBOC, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts a resolution taking such prior action.

Section 2.12 Action Without Meeting.

(1) Any action required by law to be taken at a meeting of the shareholders, and/or any action that may be taken at a meeting of the shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent of the shareholders shall bear the date of signature of each shareholder who signs the consent. No written consent solicited on behalf of a person other than the corporation or the board of directors shall be effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to the corporation as provided below, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, its principal place of business, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of the shareholders are recorded. Such delivery shall be made by hand or by certified or registered mail, return receipt requested, and in the case of delivery to the corporation's principal place of business, shall be addressed to the president of the corporation.

(3) A telegram, telex, cablegram, or other electronic transmission by a shareholder consenting to an action to be taken is considered to be written, signed, and dated for the purposes of this Section if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the shareholder and the date on which the shareholder transmitted the transmission. The date of transmission is the date on which the consent was signed. Consent given by telegram, telex, cablegram, or other electronic transmission may not be considered delivered until the consent is reproduced in paper form and the paper form is delivered to the corporation at its registered office in this state or its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded. Notwithstanding Subsection (2) of this Section, consent given by telegram, telex, cablegram, or other electronic transmission may be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded to the extent and in the manner provided by resolution of the board of directors of the corporation. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a shareholder may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing.

(4) Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

Section 2.13 Telephone or Remote Communication Meetings. Shareholders may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every shareholder voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 2.14 Minutes. The shareholders shall keep regular minutes of their proceedings, and such minutes shall be placed in the minute book of the corporation.

### ARTICLE III

#### DIRECTORS

Section 3.01 Management. The powers of the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, its board of directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or by the Certificate of Formation or by these Bylaws directed or required to be exercised and done by the shareholders.

Section 3.02 Number; Election; Term; Qualification; Removal. The number of directors of the corporation shall be such number as shall be from time to time specified by resolution of the board of directors; provided, however, that no director's term shall be shortened by reason of a resolution reducing the number of directors; and further provided that the number of directors constituting the initial board of directors shall be one (1), and shall remain at such number unless and until changed by resolution of the board of directors as aforesaid. The directors shall be elected at the annual meeting of the shareholders, except as provided in Section 3.03, and each director elected shall hold office for the term for which he is elected and until his successor is elected and qualified. Directors need not be residents of the State of Texas or shareholders of the corporation. Any director may be removed at any time, with or without cause, at a special meeting of the shareholders called for that purpose.

Section 3.03 Resignations; Vacancies. A director may resign at any time by giving written notice to the board of directors or the chairman of the board. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors (or by the sole remaining director) though less than a quorum of the board of directors, or may be filled by an election at an annual or special meeting of the shareholders called for that purpose; provided, however, that if the vacancy is caused by reason of an increase in the number of directors, the board of directors may vote to fill not more than two such directorships during the period between any two successive annual meetings of shareholders. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office, or until the next election of one or more directors by shareholders if the vacancy is caused by an increase in the number of directors.

Section 3.04 Location of Meetings. Meetings of the board of directors, regular or special, may be held either within or without the State of Texas.

Section 3.05 First Meeting of New Board. The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the shareholders at the annual meeting, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the shareholders to fix the time and place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the shareholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

Section 3.06 Regular Meetings. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

Section 3.07 Special Meetings. Special meetings of the board of directors may be called by the chairman of the board or the president and shall be called by the secretary on the written request of any director. Written notice of special meetings of the board of directors shall be given to each director at least three (3) days before the date of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 3.08 Quorum; Votes Required. A majority of the directors shall constitute a quorum for the transaction of business and the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is required by law or the Certificate of Formation. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally notified and called.

Section 3.09 Action Without Meeting. The Board of Directors or committee of the Board of Directors may take action without holding a meeting, providing notice, or taking a vote if each director or member of the committee entitled to vote on the action signs a written consent or consents stating the action taken. Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a director or member of the committee may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing. Advance notice is not required to be given to take an action by written consent. Such consent shall have the same force and effect as a unanimous vote at a meeting of the board of directors or the committee, as the case may be, duly called and held.

Section 3.10 Telephone Meetings. Directors and committee members may participate in and hold a meeting by means of conference telephone or similar communication equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every director or committee member voting at the meeting by means of remote communications is sufficiently identified, and a record of any vote or other action taken must be kept. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 3.11 Committees of Directors. The board of directors, by resolution adopted by a majority of the whole board, may designate from among its members one or more committees, each of which shall be comprised of one or more of its members, and may designate one or more of its members as alternate members of any committee, who may, subject to any limitations imposed by the board of directors, replace absent or disqualified members at any meeting of that committee. Any such committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the board of directors in the business and affairs of the corporation except where the action of the board of directors is required, or the authority of such committee is limited, by statute. The number of members on each committee may be increased or decreased from time to time by resolution of the board of directors. Any member of any committee may be removed from such committee at any time by resolution of the board of directors. Vacancies in the membership of a committee (whether by death, resignation, removal or otherwise) may be

filled by resolution of the board of directors. The time, place and notice (if any) of meetings of any committee shall be determined by such committee. At meetings of any committee, a majority of the number of members of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee, except as otherwise specifically provided by statute, the Certificate of Formation, or these Bylaws. If a quorum is not present at a meeting of any committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Each committee shall keep regular minutes of its proceedings and report the same to the board when required. The designation of any such committee of the board of directors and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

Section 3.12 Compensation of Directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of committees of the board may be allowed like compensation for attending committee meetings.

Section 3.13 Minutes. The board of directors shall keep regular minutes of its proceedings, and such minutes shall be placed in the minute book of the corporation.

#### ARTICLE IV

##### NOTICES

Section 4.01 General. Notices to shareholders, directors and committee members shall be in writing and may be delivered personally or mailed by U.S. mail, postage prepaid, to the shareholders, directors or committee members, respectively, at their addresses appearing on the books and share transfer records of the corporation. Notice to shareholders shall be deemed to be given at the time when the same shall be so delivered or mailed. Notice to directors and committee members may also be given by nationally recognized overnight delivery or courier service, facsimile transmission or telegram, and shall be deemed given when such notice shall be received by the proper recipient or, if earlier, (i) in the case of an overnight delivery or courier service, one (1) day after such notice is sent by such overnight delivery or courier service; (ii) in the case of telegraph, when deposited at a telegraph office for transmission and all appropriate fees therefor have been paid; and (iii) in the case of mailing by U.S. mail, three (3) days after such notice is mailed as described above. On consent of a shareholder, director or committee member, notice from the corporation may be given to the shareholder, director or committee member by electronic transmission. The shareholder, director or committee member may specify the form of electronic transmission to be used to communicate notice. The shareholder, director or committee member may revoke this consent by written notice to the corporation. The consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the person responsible for delivering notice on behalf of the corporation knows that delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of consent does not

invalidate a meeting or other action. Notice by electronic transmission is deemed given when the notice is (i) transmitted to a facsimile number provided by the shareholder, director or committee member for the purpose of receiving notice; (ii) transmitted to an electronic mail address provided by the shareholder, director or committee member for the purpose of receiving notice; (iii) posted on an electronic network and a message is sent to the shareholder, director or committee member at the address provided by the shareholder, director or committee member for the purpose of alerting the shareholder, director or committee member of a posting; or (iv) communicated to the shareholder, director or committee member by any other form of electronic transmission consented to by the shareholder, director or committee member.

Section 4.02 Waivers. Whenever any notice is required to be given to any shareholder, director or committee member under the provisions of law or of the Certificate of Formation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 4.03 Attendance as Waiver. Attendance of a director or member of a committee at a meeting or participation by a director or member of a committee in a meeting shall constitute a waiver of notice of such meeting, except where a director or committee member attends or participates in a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.04 Omission of Notice to Shareholders. Any notice required to be given to any shareholder under any provision of the TBOC, the Certificate of Formation or these Bylaws need not be given to the shareholder if (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a twelve (12) month period have been mailed to that person, addressed at his address as shown on the share transfer records of the corporation, and have been returned undeliverable. Any action or meeting taken or held without notice to such a person shall have the same force and effect as if the notice had been duly given. If such a person delivers to the corporation a written notice setting forth his then current address, the requirement that notice be given to that person shall be reinstated.

## ARTICLE V

### OFFICERS

Section 5.01 General. The officers of the corporation shall consist of a president and a secretary and may also include a chairman of the board, a vice-chairman of the board, one or more vice presidents, one or more assistant secretaries, and a treasurer and one or more assistant treasurers, each of whom shall be elected by the board of directors. The chairman and vice-chairman of the board, if any, shall each be members of the board of directors, but no other officers of the corporation need be a director. Any two or more offices may be held by the same person.

Section 5.2 Election of Officers; Salaries. At the first meeting of the board of directors after each annual meeting of shareholders, the board of directors shall choose a president and a secretary. Such other officers and assistant officers and agents as may be deemed necessary may also be elected or appointed by the board of directors. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.

Section 5.03 Term of Office. The officers of the corporation shall hold office until their respective successors are chosen and qualify. Any officer or agent who is elected or appointed by the board of directors may be removed by the board of directors at any time, if, in the judgment of the board of directors, the best interests of the corporation will be served thereby; provided, that such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancy occurring in any office of the corporation (whether by death, resignation, removal or otherwise) shall be filled by resolution of the board of directors.

Section 5.04 Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as chairman of the board. The chairman of the board, if any, shall preside at meetings of the shareholders and of the board of directors, shall be an ex officio member of all committees, and shall have such other powers and perform such other duties as the board of directors may from time to time prescribe.

Section 5.05 Vice-Chairman of the Board. The board of directors may, in its discretion, choose a director to serve as vice-chairman of the board. The vice-chairman of the board, if any, shall in the absence of the chairman of the board perform the duties and exercise the powers of the chairman of the board, and shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.06 President. The president shall be the chief executive officer of the corporation, shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect. In the event the board of directors shall not have designated a chairman of the board, or in the absence of the chairman of the board, the president shall preside at meetings of the shareholders and the board of directors. The president may sign and execute contracts, agreements and other documents on behalf of the corporation, and may sign and execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation. In addition, the president shall have such other powers and perform such other duties as shall be designated by the board of directors from time to time.

Section 5.07 Vice Presidents. The vice presidents, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the president, perform the duties and exercise the powers of the president. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.



Section 5.08 Secretary. The secretary shall attend all meetings of the board of directors and all meetings of the shareholders and record all the proceedings of the meetings of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for any committees when required. The secretary shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. The secretary shall keep in safe custody the seal of the corporation and, when authorized by the board of directors, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of an assistant secretary, the treasurer or an assistant treasurer.

Section 5.09 Assistant Secretaries. The assistant secretaries, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

Section 5.10 Treasurer. The treasurer, if any, shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. In the absence of the election or appointment of a treasurer or any assistant treasurers by the board of directors, the duties of the office of treasurer shall be performed by the secretary of the Corporation. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the president and the board of directors at its regular meetings or when the board of directors so requires an account of all his transactions as treasurer and of the financial condition of the corporation. If required by the board of directors, he shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 5.11 Assistant Treasurers. The assistant treasurers, if any, in the order of their seniority, unless otherwise determined by the board of directors, shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. They shall perform such other duties and exercise such other powers as the board of directors may from time to time prescribe.

## ARTICLE VI

### SHARES OF STOCK

Section 6.01 Certificates. The corporation shall deliver certificates representing all shares to which shareholders are entitled; and such certificates shall be signed by the president or a vice president, and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. Each certificate representing shares shall state upon the front thereof that the corporation is organized under the laws of the State of Texas, the name of the person to whom issued, the number and class and the designation of the series, if any, that such certificate represents, and the par value of each share represented by such certificate or a statement that the shares are without par value.

Section 6.02 Issuance; Payment. Shares (both treasury and authorized but unissued) may be issued for such consideration (not less than par value in the case of authorized but unissued shares) and to such persons as the board of directors may from time to time authorize. Consideration for the issuance of shares may consist of any type of consideration permitted under the TBOC. Shares may not be issued until the consideration for which the shares are to be issued shall have been paid or delivered as required in connection with the authorization of the shares. When the consideration is paid or delivered, such shares shall be considered to be issued and fully paid and nonassessable, and the subscriber or other person entitled to receive the shares shall be a shareholder with respect to the shares. In the absence of fraud in the transaction, the judgment of the board of directors is conclusive in determining the value and sufficiency of the consideration received for the shares.

Section 6.03 Shares of More than One Class. If the corporation is authorized to issue shares of more than one class or series, each certificate representing shares issued by the corporation shall conspicuously state on the front or back of the certificate (1) the designations, preferences, limitations and relative rights of the shares of each class or series to the extent they have been determined and the authority of the board of directors to make those determinations as to subsequent series; or (2) that the information required by clause (1) is stated in the Certificate of Formation on file in the office of the Secretary of State and that the corporation will furnish a free copy of that information to the record holder of the certificate on written request to the corporation at its principal place of business or registered office.

Section 6.04 Signatures. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation in the same manner and with the same effect as if he or she were such officer at the date of the issuance.

Section 6.05 Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

Section 6.06 Transfer of Certificates. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6.07 Restriction of Transfer of Shares. If the corporation issues any shares that are not registered under the Securities Act of 1933, as amended, and registered or qualified under any applicable state securities laws, the transfer of any such shares shall be restricted in accordance with the following legend, which legend (or a substantively similar legend) shall be conspicuously set forth on the front or back of each certificate representing such shares:

“The shares of stock represented by this certificate have not been registered under the Securities Act of 1933, as amended (the ‘Act’), or registered or qualified under the securities laws of any state, and the holder hereof cannot make any sale, assignment or other transfer of any shares of such stock except pursuant to an offering of such shares duly registered under the Act and registered or qualified under any applicable state securities laws, or under such other circumstances as in the opinion of counsel for or satisfactory to the issuer shall not, at the time, require registration under the Act and/or registration or qualification under any state securities law. Also said shares are ‘restricted securities’ within the meaning of Rule 144 promulgated by the Securities and Exchange Commission under the Act and may be subject to the limitations and reporting requirements of said rule upon resale or other disposition thereof.”

In the event any restriction on the transfer, or registration of the transfer, of shares shall be imposed or agreed to by the corporation, each certificate representing shares so restricted (1) shall conspicuously set forth a full or summary statement of the restriction on the front of the certificate, or (2) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the front of the certificate, or (3) shall conspicuously state on the front or back of the certificate that such a restriction exists pursuant to a specified document and (a) that the corporation will furnish to the record holder of the certificate a free copy of the specified document upon written request to the corporation at its principal place of business or registered office, or (b) if such document has been filed in accordance with the TBOC, that such document is on file in the office of the Secretary of State and contains a full statement of such restriction.

Section 6.08 Registered Holders of Shares. Unless otherwise provided in the TBOC, and subject to the provisions of Chapter 8 - Investment Securities of the Texas Business and Commerce Code, as amended:

(1) The corporation may consider the person registered as the owner of a share in the share transfer records of the corporation at any particular time (including, without limitation, as of a record date fixed pursuant to Section 2.10 or 2.11 of these Bylaws) as the owner of that share at that time for purposes of voting that share, receiving distributions or notices in respect thereof, transferring the share, exercising rights of dissent with respect to that share, exercising or waiving any preemptive right with respect to that share, entering into any agreements with respect to that share in accordance with the TBOC, or giving proxies with respect to that share; and

(2) Neither the corporation nor any of its officers, directors, employees or agents shall be liable for regarding that person as the owner of that share at that time for those purposes, regardless of whether that person does not possess a certificate representing that share.

## ARTICLE VII

### INDEMNIFICATION

Section 7.01 General. The corporation shall indemnify persons for whom indemnification is permitted by the TBOC to the fullest extent permissible under the TBOC, and may purchase such indemnification insurance as the Board of Directors from time to time shall determine.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.01 Dividends. The board of directors may declare and the corporation may pay dividends on its outstanding shares in cash, property or its own shares pursuant to law and subject to the provisions of its Certificate of Formation.

Section 8.02 Reserves. The board of directors may by resolution create a reserve or reserves out of surplus for any proper purpose or purposes, and may modify or abolish any such reserve in the same manner.

Section 8.03 Books and Records. The corporation shall keep books and records of account and shall keep minutes of the proceedings of the shareholders, the board of directors and each committee of the board of directors. The corporation shall keep at its registered office or, whether within or outside the state of Texas, at its principal place of business or at the office of its transfer agent or registrar, a current record of the original issuance of shares issued by the corporation and a record of each transfer of those shares that have been presented to the corporation for registration of transfer. Such records shall contain the names and mailing addresses of all past and current shareholders and the number and class or series of shares issued by the corporation held by each of them. Any books, records, minutes and share transfer records may be in written paper form or in any other form capable of being converted into written paper form within a reasonable time.

Section 8.04 Report to Shareholders. The board of directors must, when requested by the holders of at least one-third (1/3) of the outstanding shares of the corporation, present to the shareholders written reports giving a full and clear statement of the business and condition of the corporation, including a reasonably detailed balance sheet and income statement.

Section 8.05 Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 8.06 Fiscal Year. The fiscal year of the corporation shall be fixed by the resolution of the board of directors.

Section 8.07 Seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Texas." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 8.08 Construction. Whenever the context or circumstances so require, for all terms used herein the masculine shall include the feminine and neuter, and the singular shall include the plural, and vice versa. If any provision of these Bylaws shall be held illegal, invalid or inoperative, then, so far as is reasonable and possible (1) the remainder of the Bylaws shall be and remain legal, valid and operative and (2) effect shall be given the intent manifested by the provision held illegal, invalid or inoperative and to that end, such illegal, invalid or inoperative provision shall be deemed to have been replaced by a provision that is as similar to such illegal, invalid or inoperative provision as possible and still be legal, valid and operative.

Section 8.09 Headings. Headings used in these Bylaws have been inserted for administrative convenience only and do not constitute matter to be construed in interpretation of the substantive provisions of these Bylaws.

## ARTICLE IX

### AMENDMENT OF BYLAWS

Section 9.01 General. These Bylaws may be altered, amended or repealed or new bylaws may be adopted at any meeting of the board of directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting), subject to repeal or change at any meeting of the shareholders at which a quorum is present, by the affirmative vote of a majority of the shareholders present at such meeting (provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting).

The undersigned Secretary of MRC Rockies Company hereby certifies that the foregoing Bylaws were duly adopted by Written Consent of the Board of Directors as of December 5, 2008.

/s/ Joseph Wm. Foran

Joseph Wm. Foran, President

FORM OF SENIOR INDENTURE

MATADOR RESOURCES COMPANY

*as Issuer*

and

---

*as Trustee*

---

Indenture

Dated as of \_\_\_\_\_ ,

---

Debt Securities

**MATADOR RESOURCES COMPANY**

**Reconciliation and tie between Trust Indenture Act of 1939 and Indenture, dated as of \_\_\_\_\_,**

Section of Trust Indenture Act of 1939		Section(s) of Indenture
§310	(a)(1)	7.10
	(a)(2)	7.10
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(a)(5)	7.10
	(b)	7.08, 7.10
	(c)	
§311	(a)	7.11
	(b)	7.11
	(c)	Not Applicable
§312	(a)	2.07
	(b)	11.03
	(c)	11.03
§313	(a)	7.06
	(b)	7.06
	(c)	7.06
	(d)	7.06
§314	(a)	4.03, 4.04
	(b)	Not Applicable
	(c)(1)	11.04
	(c)(2)	11.04
	(c)(3)	Not Applicable
	(d)	Not Applicable
§315	(e)	11.05
	(a)	7.01(b)
	(b)	7.05
	(c)	7.01(a)
	(d)	7.01(c)
	(d)(1)	7.01(c)(1)
	(d)(2)	7.01(c)(2)
	(d)(3)	7.01(c)(3)
	(e)	6.11
	§316	(a)(1)(A)
(a)(1)(B)		6.04
(a)(2)		Not Applicable
(a)(last sentence)		2.11
	(b)	6.07
	(c)	
§317	(a)(1)	6.08
	(a)(2)	6.09
	(b)	2.06
§318	(a)	11.01

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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INDENTURE dated as of \_\_\_\_\_, between Matador Resources Company, a Texas corporation (the “Company”), and \_\_\_\_\_, as trustee (the “Trustee”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company’s unsecured debentures, notes or other evidences of indebtedness (the “Securities”) to be issued from time to time in one or more series as provided in this Indenture:

**ARTICLE I**  
**DEFINITIONS AND INCORPORATION BY REFERENCE**

SECTION 1.01 *Definitions.*

“Additional Amounts” means any additional amounts required by the express terms of a Security or by or pursuant to a Board Resolution, under circumstances specified therein or pursuant thereto, to be paid by the Company with respect to certain taxes, assessments or other governmental charges imposed on certain Holders and that are owing to such Holders.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such specified Person. For purposes of this definition, “control” of a Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” shall have meanings correlative to the foregoing.

“Agent” means any Registrar or Paying Agent.

“Bankruptcy Law” means Title 11 of the United States Code or any similar federal, state or foreign law for the relief of debtors.

“Board of Directors” means the Board of Directors of the Company or any committee thereof duly authorized, with respect to any particular matter, to act by or on behalf of the Board of Directors of the Company.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“Business Day” means any day that is not a Legal Holiday.

“Capitalized Lease Obligation” of any Person means any obligation of such Person to pay rent or other amounts under a lease of property, real or personal, that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Company” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person; *provided, however*, that for purposes of any provision contained herein which is required by the TIA, “Company” shall also mean each other obligor (if any) on the Securities of a series.

“Company Order” and “Company Request” mean, respectively, a written order or request signed in the name of the Company by two Officers of the Company, and delivered to the Trustee.

“Corporate Trust Office of the Trustee” means the office of the Trustee located at \_\_\_\_\_, Attention: \_\_\_\_\_, and as may be located at such other address as the Trustee may give notice to the Company.

“Debt” of any Person means, without duplication: (i) all indebtedness or obligations of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof); (ii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments; (iii) all obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto), other than standby letters of credit, bid or performance bonds and other obligations issued by or for the account of such Person in the ordinary course of business; (iv) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, except trade payables and accrued expenses incurred in the ordinary course of business; (v) all Capitalized Lease Obligations of such Person; (vi) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person (provided that if the obligations so secured have not been assumed in full by such Person or are not otherwise such Person’s legal liability in full, then such obligations shall be deemed to be in an amount equal to the greater of (a) the lesser of (1) the full amount of such obligations and (2) the fair market value of such assets, as determined in good faith by the Board of Directors of such Person, which determination shall be evidenced by a Board Resolution, and (b) the amount of obligations as have been assumed by such Person or which are otherwise such Person’s legal liability); and (vii) all Debt of others (other than endorsements in the ordinary course of business) guaranteed by such Person to the extent of such guarantee.

“Default” means any event, act or condition that is, or after notice or the passage of time or both would be, an Event of Default.

“Depositary” means, with respect to the Securities of any series issuable or issued in whole or in part in global form, the Person specified pursuant to Section 2.01 hereof as the initial Depositary with respect to the Securities of such series, until a successor shall have been appointed and become such pursuant to the applicable provision of this Indenture, and thereafter “Depositary” shall mean or include such successor.

“Dollar” or “\$” means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debt.

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

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect from time to time.

“Global Security” means a Security that is issued in global form in the name of the Depositary or its nominee with respect thereto.

“Government Obligations” means, with respect to a series of Securities, direct obligations of the government that issues the currency in which the Securities of the series are payable for the payment of which the full faith and credit of such government is pledged, or obligations of a Person controlled or supervised by and acting as an agency or instrumentality of such government, the payment of which is unconditionally guaranteed as a full faith and credit obligation by such government.

“Guarantee” means a guarantee of any Securities by a Guarantor as contemplated by Article X; provided that the term “Guarantee,” when used with respect to any Security or with respect to the Securities of any series, means a guarantee of such Security or of the Securities of such series, respectively, by a Guarantor of such Security or of the Securities of such series, respectively, as contemplated by Article X.

“Guarantor” means each Person who shall become a Guarantor under this Indenture pursuant to Section 9.01 hereof, in each case unless and until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, at which time references to such Guarantor shall mean such successor Person; provided that (i) the term “Guarantor,” when used, with respect to the Securities of any series, means the

Persons who shall from time to time be the guarantors of Securities of such series as contemplated by Article X; and (ii) any Person constituting a Guarantor with respect to the Securities of a series shall cease to constitute a Guarantor with respect to Securities of such series when its Guarantee is released with respect to Securities of such series in accordance with the terms of this Indenture.

“Guarantor’s Officers’ Certificate” means, with respect to any Guarantor, a certificate signed by any two of the following: a Chairman of the Board, a Chief Executive Officer, a President, a Vice President, a Treasurer, an Assistant Treasurer, a Secretary or an Assistant Secretary of such Guarantor (or, if such Guarantor is a partnership that has no such officers, of a general partner of such Guarantor), or any other officer or officers of such Guarantor (or of such a general partner) designated in a writing by or pursuant to authority of such Guarantor’s Board of Directors and delivered to the Trustee from time to time.

“Holder” means a Person in whose name a Security is registered.

“Indenture” means this Indenture as amended or supplemented from time to time pursuant to the provisions hereof, and includes the terms of a particular series of Securities established as contemplated by Section 2.01.

“Interest” means, with respect to an Original Issue Discount Security that by its terms bears interest only after Maturity, interest payable after Maturity and when used with respect to any Security, means all amounts of interest accruing on such Security, including any default interest.

“Interest Payment Date,” when used with respect to any Security, shall have the meaning assigned to such term in the Security as contemplated by Section 2.01.

“Issue Date” means, with respect to Securities of a series, the date on which the Securities of such series are originally issued under this Indenture.

“Legal Holiday” means a Saturday, a Sunday or a day on which banking institutions in any of The City of New York, New York; Dallas, Texas or a Place of Payment are authorized or obligated by law, regulation or executive order to remain closed.

“Maturity” means, with respect to any Security, the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity thereof, or by declaration of acceleration, call for redemption or otherwise.

“Officer” means the Chairman of the Board, the President, any Vice Chairman of the Board, the Chief Executive Officer, any Vice President, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary of a Person.

“Officers’ Certificate” means a certificate signed by two Officers of a Person.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. Such counsel may be an employee of or counsel to the Company or the Trustee.

“Original Issue Discount Security” means any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.02.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or other agency, instrumentality or political subdivision thereof or other entity of any kind.

“Place of Payment” means, with respect to the Securities of any series, the place or places where the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of that series are payable as specified in accordance with Section 2.01 subject to the provisions of Section 4.02.

“Principal” of a Security means the principal of the Security plus, when appropriate, the premium, if any, on the Security.

“Redemption Date” means, with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

“Redemption Price” means, with respect to any Security to be redeemed, the price at which it is to be redeemed pursuant to this Indenture.

“Responsible Officer” means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Rule 144A Securities” means Securities of a series designated pursuant to Section 2.01 as entitled to the benefits of Section 4.03(b).

“SEC” means the Securities and Exchange Commission.

“Securities” has the meaning stated in the preamble of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“Security Custodian” means, with respect to Securities of a series issued in global form, the Trustee for Securities of such series, as custodian with respect to the Securities of such series, or any successor entity thereto.

“Stated Maturity” means, when used with respect to any Security or any installment of principal thereof or interest thereon, the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“Subsidiary” of a Person means an Affiliate controlled by such Person directly, or indirectly through one or more intermediaries.

“TIA” means the Trust Indenture Act of 1939, as amended, as in effect on the date hereof.

“Trustee” means the Person named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture, and thereafter “Trustee” means each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series means the Trustee with respect to Securities of that series.

“United States” means the United States of America (including the States and the District of Columbia) and its territories and possessions, which include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

SECTION 1.02 *Other Definitions.*

<u>Term</u>	<u>Defined in Section</u>
"Agent Members"	2.17
"Bankruptcy Custodian"	6.01
"Covenant Defeasance"	8.01
"Event of Default"	6.01
"Exchange Rate"	2.11
"Interest Payment Date"	2.07
"Judgment Currency"	6.10
"Legal Defeasance"	8.01
"Mandatory Sinking Fund Payment"	3.09
"Optional Sinking Fund Payment"	3.09
"Paying Agent"	2.05
"Registrar"	2.05
"Required Currency"	6.10
"Successor"	5.01

SECTION 1.03 *Incorporation by Reference of Trust Indenture Act.*

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture (and if the Indenture is not qualified under the TIA at that time, as if it were so qualified unless otherwise provided). The following TIA terms used in this Indenture have the following meanings:

"Commission" means the SEC.

"Indenture Securities" means the Securities.

"Indenture Security Holder" means a Holder.

"Indenture to be Qualified" means this Indenture.

"Indenture Trustee" or "Institutional Trustee" means the Trustee.

"Obligor" on the indenture securities means the Company or any other obligor on the Securities.

All terms used in this Indenture that are defined by the TIA, defined by a TIA reference to another statute or defined by an SEC rule under the TIA have the meanings so assigned to them.

SECTION 1.04 *Rules of Construction.*

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) "or" is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) provisions apply to successive events and transactions; and

(6) all references in this instrument to Articles and Sections are references to the corresponding Articles and Sections in and of this instrument.

## ARTICLE II THE SECURITIES

### SECTION 2.01 *Amount Unlimited; Issuable in Series.*

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth, or determined in the manner provided, in an Officers' Certificate of the Company or in a Company Order, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

- (1) the title of the Securities of the series (which shall distinguish the Securities of the series from the Securities of all other series);
- (2) if there is to be a limit, the limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 2.08, 2.09, 2.12, 2.17, 3.07 or 9.05 and except for any Securities which, pursuant to Section 2.04 or 2.17, are deemed never to have been authenticated and delivered hereunder); *provided, however*, that unless otherwise provided in the terms of the series, the authorized aggregate principal amount of such series may be increased before or after the issuance of any Securities of the series by a Board Resolution (or action pursuant to a Board Resolution) to such effect;
- (3) whether any Securities of the series are to be issuable initially in temporary global form and whether any Securities of the series are to be issuable in permanent global form, as Global Securities or otherwise, and, if so, whether beneficial owners of interests in any such Global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.17, and the initial Depositary and Security Custodian, if any, for any Global Security or Securities of such series;
- (4) the manner in which any interest payable on a temporary Global Security on any Interest Payment Date will be paid if other than in the manner provided in Section 2.14;
- (5) the date or dates on which the principal of and premium (if any) on the Securities of the series is payable or the method of determination thereof;
- (6) the rate or rates, or the method of determination thereof, at which the Securities of the series shall bear interest, if any, whether and under what circumstances Additional Amounts with respect to such Securities shall be payable, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the record date for the interest payable on any Securities on any Interest Payment Date, or if other than provided herein, the Person to whom any interest on Securities of the series shall be payable;
- (7) the place or places where, subject to the provisions of Section 4.02, the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series shall be payable;
- (8) the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, if the Company is to have that option, and the manner in which the Company must exercise any such option, if different from those set forth herein;



- (9) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid in whole or in part pursuant to such obligation;
- (10) if other than denominations of \$1,000 and any integral multiple thereof, the denomination in which any Securities of that series shall be issuable;
- (11) if other than Dollars, the currency or currencies (including composite currencies) or the form, including equity securities, other debt securities (including Securities), warrants or any other securities or property of the Company or any other Person, in which payment of the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series shall be payable;
- (12) if the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a currency or currencies (including composite currencies) other than that in which the Securities are stated to be payable, the currency or currencies (including composite currencies) in which payment of the principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;
- (13) if the amount of payments of principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series may be determined with reference to any commodities, currencies or indices, values, rates or prices or any other index or formula, the manner in which such amounts shall be determined;
- (14) if other than the entire principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.02;
- (15) any additional means of satisfaction and discharge of this Indenture and any additional conditions or limitations to discharge with respect to Securities of the series pursuant to Article VIII or any modifications of or deletions from such conditions or limitations;
- (16) any deletions or modifications of or additions to the Events of Default set forth in Section 6.01 or covenants of the Company set forth in Article IV pertaining to the Securities of the series;
- (17) any restrictions or other provisions with respect to the transfer or exchange of Securities of the series, which may amend, supplement, modify or supersede those contained in this Article II;
- (18) if the Securities of the series are to be convertible into or exchangeable for capital stock, other debt securities (including Securities), warrants, other equity securities or any other securities or property of the Company or any other Person, at the option of the Company or the Holder or upon the occurrence of any condition or event, the terms and conditions for such conversion or exchange;
- (19) if the Securities of the series are to be entitled to the benefit of Section 4.03(b) (and accordingly constitute Rule 144A Securities), that fact; and
- (20) any other terms of the series (which terms shall not be prohibited by the provisions of this Indenture).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 2.03) set forth, or determined in the manner provided, in the Officers' Certificate or Company Order referred to above or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action, together with such Board Resolution, shall be set forth in an Officers' Certificate or certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate or Company Order setting forth the terms of the series.

*SECTION 2.02 Denominations.*

The Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 2.01. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series denominated in Dollars shall be issuable in denominations of \$1,000 and any integral multiples thereof.

*SECTION 2.03 Forms Generally.*

The Securities of each series shall be in fully registered form and in substantially such form or forms (including temporary or permanent global form) established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto. The Securities may have notations, legends or endorsements required by law, securities exchange rule, the Company's certificate of incorporation, bylaws or other similar governing documents, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). A copy of the Board Resolution establishing the form or forms of Securities of any series shall be delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 2.04 for the authentication and delivery of such Securities.

The definitive Securities of each series shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the Officers executing such Securities, as evidenced by their execution thereof.

The Trustee's certificate of authentication shall be in substantially the following form:

"This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

, as Trustee

By: \_\_\_\_\_

Authorized Signatory".

*SECTION 2.04 Execution, Authentication, Delivery and Dating.*

Two Officers of the Company shall sign the Securities on behalf of the Company by manual or facsimile signature. If an Officer of the Company whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall be valid nevertheless.

A Security shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of an authorized signatory of the Trustee, which signature shall be conclusive evidence that the Security has been authenticated under this Indenture. Notwithstanding the foregoing, if any Security has been authenticated and delivered hereunder but never issued and sold by the Company, and the Company delivers such Security to the Trustee for cancellation as provided in Section 2.13, together with a written statement (which need not comply with Section 11.05 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, and the Trustee shall authenticate and deliver such Securities for original issue upon a Company Order for the authentication and delivery of such Securities or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by Company Order. Such order shall specify the amount of the Securities to be authenticated, the date on which the original issue of Securities is to be authenticated, the name or names of the initial Holder or Holders and any other terms of the Securities of such series not otherwise determined. If provided for in such procedures, such Company Order may authorize (1) authentication and delivery of Securities of such series for original issue from time to time, with certain terms (including, without limitation, the Maturity date or dates, original issue date or dates and interest rate or rates) that differ from Security to Security and (2) authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent, which instructions shall be promptly confirmed in writing.

If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Section 2.01, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive (in addition to the Company Order referred to above and the other documents required by Section 11.04), and (subject to Section 7.01) shall be fully protected in relying upon:

(a) an Officers' Certificate setting forth the Board Resolution and, if applicable, an appropriate record of any action taken pursuant thereto, as contemplated by the last paragraph of Section 2.01; and

(b) an Opinion of Counsel to the effect that:

(i) the form of such Securities has been established in conformity with the provisions of this Indenture;

(ii) the terms of such Securities have been established in conformity with the provisions of this Indenture;

(iii) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws in effect from time to time affecting the rights of creditors generally, and the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

(iv) that all laws and requirements in respect of the execution and delivery by the Company of such Securities have been complied with.

If all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Officers' Certificate and Opinion of Counsel at the time of issuance of each such Security, but such Officers' Certificate and Opinion of Counsel shall be delivered at or before the time of issuance of the first Security of the series to be issued.

The Trustee shall not be required to authenticate such Securities if the issuance of such Securities pursuant to this Indenture would affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner not reasonably acceptable to the Trustee.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

Each Security shall be dated the date of its authentication.

*SECTION 2.05 Registrar and Paying Agent.*

The Company shall maintain an office or agency for each series of Securities where Securities of such series may be presented for registration of transfer or exchange ("Registrar") and an office or agency where Securities of such series may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Securities of such series and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. The Company may change any Paying Agent or Registrar without notice to any Holder. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any Subsidiary may act as Paying Agent or Registrar.

The Company initially appoints the Trustee as Registrar and Paying Agent.

*SECTION 2.06 Paying Agent to Hold Money in Trust.*

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, or interest on or any Additional Amounts with respect to Securities and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. Upon payment over to the Trustee and upon accounting for any funds disbursed, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Each Paying Agent shall otherwise comply with TIA § 317(b).

*SECTION 2.07 Holder Lists.*

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar with respect to a series of Securities, the Company shall furnish to the Trustee at least five Business Days before each interest payment date (the "Interest Payment Date") with respect to such series of Securities, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders of such series, and the Company shall otherwise comply with TIA § 312(a).

*SECTION 2.08 Transfer and Exchange.*

Except as set forth in Section 2.17 or as may be provided pursuant to Section 2.01:

When Securities of any series are presented to the Registrar with the request to register the transfer of such Securities or to exchange such Securities for an equal principal amount of Securities of the same series of like tenor and of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements and the requirements of this Indenture for such transactions are met; *provided, however*, that the Securities presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instruction of transfer in form reasonably satisfactory to the Registrar duly executed by the Holder thereof or by his attorney, duly authorized in writing, on which instruction the Registrar can rely.

To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's written request and submission of the Securities or Global Securities. No service charge shall be made to a Holder for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than such transfer tax or similar governmental charge payable upon exchanges pursuant to Section 2.12, 3.07 or 9.05). The Trustee shall authenticate Securities in accordance with the provisions of Section 2.04. Notwithstanding any other provisions of this Indenture to the contrary, the Company shall not be required to register the transfer or exchange of (a) any Security selected for redemption in whole or in part pursuant to Article III, except the unredeemed portion of any Security being redeemed in part, or (b) any Security during the period beginning 15 Business Days prior to the mailing of notice of any offer to repurchase Securities of the series required pursuant to the terms thereof or of redemption of Securities of a series to be redeemed and ending at the close of business on the day of mailing.

#### SECTION 2.09 *Replacement Securities.*

If any mutilated Security is surrendered to the Trustee, or if the Holder of a Security claims that the Security has been destroyed, lost or stolen and the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of such Security, the Company shall issue and the Trustee shall authenticate a replacement Security of the same series if the Trustee's requirements are met. If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security. If required by the Trustee or the Company, such Holder must furnish an indemnity bond that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent or any authenticating agent from any loss that any of them may suffer if a Security is replaced. The Company and the Trustee may charge a Holder for their expenses in replacing a Security.

Every replacement Security is an additional obligation of the Company.

#### SECTION 2.10 *Outstanding Securities.*

The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those defeased pursuant to Section 8.01(c), those reductions in the interest in a Global Security effected by the Trustee hereunder and those described in this Section 2.10 as not outstanding.

If a Security is replaced pursuant to Section 2.09, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

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

A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

#### SECTION 2.11 *Original Issue Discount, Foreign-Currency Denominated and Treasury Securities.*

In determining whether the Holders of the required principal amount of Securities have concurred in any direction, amendment, supplement, waiver or consent, (a) the principal amount of an Original Issue Discount Security shall be the principal amount thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof pursuant to Section 6.02, (b) the principal amount of a Security denominated in a foreign currency shall be the Dollar equivalent, as determined by the Company by reference to the noon buying rate in The City of New York for cable transfers for such currency, as such rate is certified for customs purposes by the Federal Reserve Bank of New York (the "Exchange Rate") on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent, as

determined by the Company by reference to the Exchange Rate on the date of original issuance of such Security, of the amount determined as provided in (a) above), of such Security and (c) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded, except that, for the purpose of determining whether the Trustee shall be protected in relying upon any such direction, amendment, supplement, waiver or consent, only Securities that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded.

#### SECTION 2.12 *Temporary Securities.*

Until definitive Securities of any series are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities, but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

#### SECTION 2.13 *Cancellation.*

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, payment or redemption or for credit against any sinking fund payment. The Trustee shall cancel all Securities surrendered for registration of transfer, exchange, payment, redemption, replacement or cancellation or for credit against any sinking fund. Unless the Company shall direct in writing that canceled Securities be returned to it, after written notice to the Company all canceled Securities held by the Trustee shall be disposed of in accordance with the usual disposal procedures of the Trustee, and the Trustee shall maintain a record of their disposal. The Company may not issue new Securities to replace Securities that have been paid or that have been delivered to the Trustee for cancellation or for credit against any sinking fund payment.

#### SECTION 2.14 *Payments; Defaulted Interest.*

Unless otherwise provided as contemplated by Section 2.01, interest (except defaulted interest) on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Persons who are registered Holders of that Security at the close of business on the record date next preceding such Interest Payment Date, even if such Securities are canceled after such record date and on or before such Interest Payment Date. The Holder must surrender a Security to a Paying Agent to collect principal payments. Unless otherwise provided with respect to the Securities of any series, the Company will pay the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities in Dollars. Such amounts shall be payable at the offices of the Trustee or any Paying Agent, provided that at the option of the Company, the Company may pay such amounts (1) by wire transfer with respect to Global Securities or (2) by check payable in such money mailed to a Holder's registered address with respect to any Securities.

If the Company defaults in a payment of interest on the Securities of any series, the Company shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest on the defaulted interest, in each case at the rate provided in the Securities of such series and in Section 4.01. The Company may pay the defaulted interest to the Persons who are Holders on a subsequent special record date. At least 15 days before any special record date selected by the Company, the Company (or the Trustee, in the name of and at the expense of the Company upon 20 days' prior written notice from the Company setting forth such special record date and the interest amount to be paid) shall mail to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

#### SECTION 2.15 *Persons Deemed Owners.*

The Company, the Trustee, any Agent and any authenticating agent may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payments of principal of, premium (if any) or interest on or any Additional Amounts with respect to such Security and for all other purposes. None of the Company, the Trustee, any Agent or any authenticating agent shall be affected by any notice to the contrary.

#### SECTION 2.16 *Computation of Interest.*

Except as otherwise specified as contemplated by Section 2.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a year comprising twelve 30-day months.

#### SECTION 2.17 *Global Securities; Book-Entry Provisions.*

If Securities of a series are issuable in global form as a Global Security, as contemplated by Section 2.01, then, notwithstanding clause (10) of Section 2.01 and the provisions of Section 2.02, any such Global Security shall represent such of the outstanding Securities of such series as shall be specified therein and may provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, transfers or redemptions. Any endorsement of a Global Security to reflect the amount, or any increase or decrease in the amount, of outstanding Securities represented thereby shall be made by the Trustee (i) in such manner and upon instructions given by such Person or Persons as shall be specified in such Security or in a Company Order to be delivered to the Trustee pursuant to Section 2.04 or (ii) otherwise in accordance with written instructions or such other written form of instructions as is customary for the Depository for such Security, from such Depository or its nominee on behalf of any Person having a beneficial interest in such Global Security. Subject to the provisions of Section 2.04 and, if applicable, Section 2.12, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified in such Security or in the applicable Company Order. With respect to the Securities of any series that are represented by a Global Security, the Company authorizes the execution and delivery by the Trustee of a letter of representations or other similar agreement or instrument in the form customarily provided for by the Depository appointed with respect to such Global Security. Any Global Security may be deposited with the Depository or its nominee, or may remain in the custody of the Trustee or the Security Custodian therefor pursuant to a FAST Balance Certificate Agreement or similar agreement between the Trustee and the Depository. If a Company Order has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not comply with Section 11.05 and need not be accompanied by an Opinion of Counsel.

Members of, or participants in, the Depository (“Agent Members”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee or the Security Custodian as its custodian, or under such Global Security, and the Depository may be treated by the Company, the Trustee or the Security Custodian and any agent of the Company, the Trustee or the Security Custodian as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, (i) the registered holder of a Global Security of a series may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder of Securities of such series is entitled to take under this Indenture or the Securities of such series and (ii) nothing herein shall prevent the Company, the Trustee or the Security Custodian, or any agent of the Company, the Trustee or the Security Custodian, from giving effect to any written certification, proxy or other authorization furnished by the Depository or shall impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a beneficial owner of any Security.

Notwithstanding Section 2.08, and except as otherwise provided pursuant to Section 2.01, transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in a Global Security may be transferred in accordance with the rules and procedures of the Depository. Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security if, and only if, either (1) the Depository notifies the Company that it is unwilling or unable to continue as Depository for the Global Security and a successor Depository is not appointed by the Company within 90 days of such notice, (2) an Event of Default has occurred with respect to such series and is continuing and the Registrar has received a request from the Depository to issue Securities in lieu of all or a portion of the Global Security (in which case the Company shall deliver Securities within 30 days of such request) or (3) the Company determines not to have the Securities represented by a Global Security.

In connection with any transfer of a portion of the beneficial interests in a Global Security to beneficial owners pursuant to this Section 2.17, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Global Security in an amount equal to the principal amount of the beneficial interests in the Global Security to be transferred, and the Company shall execute, and the Trustee upon receipt of a Company Order for the authentication and delivery of Securities shall authenticate and deliver, one or more Securities of the same series of like tenor and amount.

In connection with the transfer of all the beneficial interests in a Global Security to beneficial owners pursuant to this Section 2.17, the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interests in the Global Security, an equal aggregate principal amount of Securities of authorized denominations.

Neither the Company nor the Trustee will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Securities by the Depository, or for maintaining, supervising or reviewing any records of the Depository relating to such Securities. Neither the Company nor the Trustee shall be liable for any delay by the related Global Security Holder or the Depository in identifying the beneficial owners, and each such Person may conclusively rely on, and shall be protected in relying on, instructions from such Global Security Holder or the Depository for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of the Securities to be issued).

The provisions of the last sentence of the third paragraph of Section 2.04 shall apply to any Global Security if such Global Security was never issued and sold by the Company and the Company delivers to the Trustee the Global Security together with written instructions (which need not comply with Section 11.05 and need not be accompanied by an Opinion of Counsel) with regard to the cancellation or reduction in the principal amount of Securities represented thereby, together with the written confirmation contemplated by the last sentence of the third paragraph of Section 2.04.

Notwithstanding the provisions of Sections 2.03 and 2.15, unless otherwise specified as contemplated by Section 2.01, payment of principal of, premium (if any) and interest on and any Additional Amounts with respect to any Global Security shall be made to the Person or Persons specified by the Global Security.

### **ARTICLE III REDEMPTION**

#### *SECTION 3.01 Applicability of Article.*

Securities of any series that are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 2.01 for Securities of any series) in accordance with this Article III.

#### *SECTION 3.02 Notice to the Trustee.*

If the Company elects to redeem Securities of any series pursuant to this Indenture, it shall notify the Trustee of the Redemption Date and the principal amount of Securities of such series to be redeemed. The Company shall so notify the Trustee at least 45 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee) by delivering to the Trustee an Officers' Certificate stating that such redemption will comply with the provisions of this Indenture and of the Securities of such series. Any such notice may be canceled at any time prior to the mailing of such notice of such redemption to any Holder and shall thereupon be void and of no effect.

#### *SECTION 3.03 Selection of Securities To Be Redeemed.*

If less than all the Securities of any series are to be redeemed (unless all of the Securities of such series of a specified tenor are to be redeemed), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the outstanding Securities of such series (and tenor) not previously called for redemption, either pro rata, by lot or by such other method as the Trustee shall deem fair and



appropriate and that may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series or of the principal amount of Global Securities of such series.

The Trustee shall promptly notify the Company and the Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Securities shall relate, in the case of any of the Securities redeemed or to be redeemed only in part, to the portion of the principal amount thereof which has been or is to be redeemed.

#### SECTION 3.04 *Notice of Redemption.*

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at the address of such Holder appearing in the register of Securities maintained by the Registrar.

All notices of redemption shall identify the Securities to be redeemed and shall state:

(1) the Redemption Date;

(2) the Redemption Price;

(3) that, unless the Company defaults in making the redemption payment, interest on Securities called for redemption ceases to accrue on and after the Redemption Date, and the only remaining right of the Holders of such Securities is to receive payment of the Redemption Price upon surrender to the Paying Agent of the Securities redeemed;

(4) if any Security is to be redeemed in part, the portion of the principal amount thereof to be redeemed and that on and after the Redemption Date, upon surrender for cancellation of such Security to the Paying Agent, a new Security or Securities in the aggregate principal amount equal to the unredeemed portion thereof will be issued without charge to the Holder;

(5) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price and the name and address of the Paying Agent;

(6) that the redemption is for a sinking or analogous fund, if such is the case; and

(7) the CUSIP number, if any, relating to such Securities.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name and at the expense of the Company.

#### SECTION 3.05 *Effect of Notice of Redemption.*

Once notice of redemption is mailed, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price. Upon surrender to the Paying Agent, such Securities called for redemption shall be paid at the Redemption Price, but interest installments whose maturity is on or prior to such Redemption Date will be payable on the relevant Interest Payment Dates to the Holders of record at the close of business on the relevant record dates specified pursuant to Section 2.01.

*SECTION 3.06 Deposit of Redemption Price.*

On or prior to 11:00 a.m., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or the Paying Agent (or, if the Company is acting as the Paying Agent, segregate and hold in trust as provided in Section 2.06) an amount of money in same day funds sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on and any Additional Amounts with respect to, the Securities or portions thereof which are to be redeemed on that date, other than Securities or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

If the Company complies with the preceding paragraph, then, unless the Company defaults in the payment of such Redemption Price, interest on the Securities to be redeemed will cease to accrue on and after the applicable Redemption Date, whether or not such Securities are presented for payment, and the Holders of such Securities shall have no further rights with respect to such Securities except for the right to receive the Redemption Price upon surrender of such Securities. If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal, premium, if any, any Additional Amounts, and, to the extent lawful, accrued interest thereon shall, until paid, bear interest from the Redemption Date at the rate specified pursuant to Section 2.01 or provided in the Securities or, in the case of Original Issue Discount Securities, such Securities' yield to maturity.

*SECTION 3.07 Securities Redeemed or Purchased in Part.*

Upon surrender to the Paying Agent of a Security to be redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge a new Security or Securities, of the same series and of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the unredeemed portion of the principal of the Security so surrendered that is not redeemed.

*SECTION 3.08 Purchase of Securities.*

Unless otherwise specified as contemplated by Section 2.01, the Company and any Affiliate of the Company may, subject to applicable law, at any time purchase or otherwise acquire Securities in the open market or by private agreement. Any such acquisition shall not operate as or be deemed for any purpose to be a redemption of the indebtedness represented by such Securities. Any Securities purchased or acquired by the Company may be delivered to the Trustee and, upon such delivery, the indebtedness represented thereby shall be deemed to be satisfied. Section 2.13 shall apply to all Securities so delivered.

*SECTION 3.09 Mandatory and Optional Sinking Funds.*

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment." Unless otherwise provided by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.10. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series and by this Article III.

*SECTION 3.10 Satisfaction of Sinking Fund Payments with Securities.*

The Company may deliver outstanding Securities of a series (other than any previously called for redemption) and may apply as a credit Securities of a series that have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such series of Securities; provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

### SECTION 3.11 *Redemption of Securities for Sinking Fund.*

Not less than 45 days prior (unless a shorter period shall be satisfactory to the Trustee) to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate of the Company specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivery of or by crediting Securities of that series pursuant to Section 3.10 and will also deliver or cause to be delivered to the Trustee any Securities to be so delivered. Failure of the Company to timely deliver or cause to be delivered such Officers' Certificate and Securities specified in this paragraph, if any, shall not constitute a default but shall constitute the election of the Company (i) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof and (ii) that the Company will make no optional sinking fund payment with respect to such series as provided in this Section.

If the sinking fund payment or payments (mandatory or optional or both) to be made in cash on the next succeeding sinking fund payment date plus any unused balance of any preceding sinking fund payments made in cash shall exceed \$100,000 (or the Dollar equivalent thereof based on the applicable Exchange Rate on the date of original issue of the applicable Securities) or a lesser sum if the Company shall so request with respect to the Securities of any particular series, such cash shall be applied on the next succeeding sinking fund payment date to the redemption of Securities of such series at the sinking fund redemption price together with accrued interest to the date fixed for redemption. If such amount shall be \$100,000 (or the Dollar equivalent thereof as aforesaid) or less and the Company makes no such request then it shall be carried over until a sum in excess of \$100,000 (or the Dollar equivalent thereof as aforesaid) is available. Not less than 30 days before each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.03 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.04. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.05, 3.06 and 3.07.

## ARTICLE IV COVENANTS

### SECTION 4.01 *Payment of Securities.*

The Company shall pay the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of each series on the dates and in the manner provided in the Securities of such series, in this Indenture, and in any supplemental indenture hereto. Principal, premium, interest and any Additional Amounts shall be considered paid on the date due if the Paying Agent (other than the Company or a Subsidiary) holds on that date money deposited by the Company designated for and sufficient to pay all principal, premium, interest and any Additional Amounts then due.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium (if any), at a rate equal to the then applicable interest rate on the Securities to the extent lawful; and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and any Additional Amount (without regard to any applicable grace period) at the same rate to the extent lawful.

### SECTION 4.02 *Maintenance of Office or Agency.*

The Company will maintain in each Place of Payment for any series of Securities an office or agency (which may be an office of the Trustee, the Registrar or the Paying Agent) where Securities of that series may be presented for registration of transfer or exchange, where Securities of that series may be presented for payment and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. Unless otherwise designated by the Company by written notice to the Trustee, such office or agency shall be the office of the Trustee in The City of \_\_\_\_\_, which on the date hereof is located at \_\_\_\_\_. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

**SECTION 4.03 *SEC Reports; Financial Statements.***

(a) If the Company is subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file with the Trustee, within 15 days after it files the same with the SEC, copies of the annual reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. If this Indenture is qualified under the TIA, but not otherwise, the Company shall also comply with the provisions of TIA § 314(a). Delivery of such reports, information and documents to the Trustee shall be for informational purposes only, and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates or certificates delivered pursuant to Section 4.04).

(b) If the Company is not subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Company shall furnish to all Holders of Rule 144A Securities and prospective purchasers of Rule 144A Securities designated by the Holders of Rule 144A Securities, promptly upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) promulgated under the Securities Act of 1933, as amended.

**SECTION 4.04 *Compliance Certificate.***

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, a statement signed by an Officer of the Company, which need not constitute an Officers' Certificate, complying with TIA § 314(a)(4) and stating that in the course of performance by the signing Officer of his duties as such Officer of the Company he would normally obtain knowledge of the keeping, observing, performing and fulfilling by the Company of its obligations under this Indenture, and further stating that to the best of his knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which such Officer may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) The Company shall, so long as Securities of any series are outstanding, deliver to the Trustee, forthwith upon any Officer of the Company becoming aware of any Default or Event of Default under this Indenture, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

**SECTION 4.05 *Corporate Existence.***

Subject to Article V, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

**SECTION 4.06 *Waiver of Stay, Extension or Usury Laws.***

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive it from paying all or any portion of the principal of or interest on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**SECTION 4.07 Additional Amounts.**

If the Securities of a series expressly provide for the payment of Additional Amounts, the Company will pay to the Holder of any Security of such series Additional Amounts as expressly provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or the net proceeds received from the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided for in this Section 4.07 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to the provisions of this Section 4.07 and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

**ARTICLE V  
SUCCESSORS**

**SECTION 5.01 Limitations on Mergers and Consolidations.**

The Company shall not, in any transaction or series of transactions, consolidate with or merge into any Person, or sell, lease, convey, transfer or otherwise dispose of all or substantially all of its assets to any Person, unless:

(1) either (a) the Company shall be the continuing Person or (b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged, or to which such sale, lease, conveyance, transfer or other disposition shall be made (collectively, the "Successor"), is organized and validly existing under the laws of the United States, any political subdivision thereof or any State thereof or the District of Columbia, and expressly assumes by supplemental indenture the due and punctual payment of the principal of, premium (if any) and interest on and any Additional Amounts with respect to all the Securities and the performance of the Company's covenants and obligations under this Indenture and the Securities;

(2) immediately after giving effect to such transaction or series of transactions, no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(3) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that the transaction and such supplemental indenture comply with this Indenture.

**SECTION 5.02 Successor Person Substituted.**

Upon any consolidation or merger of the Company or any sale, lease, conveyance, transfer or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01, the Successor formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance, transfer or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture and the Securities with the same effect as if such Successor had been named as the Company herein and the predecessor Company, in the case of a sale, conveyance, transfer or other disposition, shall be released from all obligations under this Indenture and the Securities.

**ARTICLE VI  
DEFAULTS AND REMEDIES**

**SECTION 6.01 Events of Default.**

Unless either inapplicable to a particular series or specifically deleted or modified in or pursuant to the supplemental indenture or Board Resolution establishing such series of Securities or in the form of Security for such series, an "Event of Default," wherever used herein with respect to Securities of any series, occurs if:

(1) the Company defaults in the payment of interest on or any Additional Amounts with respect to any Security of that series when the same becomes due and payable and such default continues for a period of 30 days;

(2) the Company defaults in the payment of (A) the principal of any Security of that series at its Maturity or (B) premium (if any) on any Security of that series when the same becomes due and payable;

(3) the Company defaults in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series, and such default continues for a period of 30 days;

(4) the Company fails to comply with any of its other covenants or agreements in, or provisions of, the Securities of such series or this Indenture (other than an agreement, covenant or provision that has expressly been included in this Indenture solely for the benefit of one or more series of Securities other than that series) which shall not have been remedied within the specified period after written notice, as specified in the last paragraph of this Section 6.01;

(5) the Company pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Bankruptcy Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors;

(6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that remains unstayed and in effect for 90 consecutive days and that:

(A) is for relief against the Company as debtor in an involuntary case,

(B) appoints a Bankruptcy Custodian of the Company or a Bankruptcy Custodian for all or substantially all of the property of the Company, or

(C) orders the liquidation of the Company; or

(7) any other Event of Default provided with respect to Securities of that series occurs.

The term "Bankruptcy Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee shall not be deemed to know or have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture.

When a Default is cured, it ceases.

Notwithstanding the foregoing provisions of this Section 6.01, if the principal of, premium (if any) or interest on or Additional Amounts with respect to any Security is payable in a currency or currencies (including a composite currency) other than Dollars and such currency or currencies are not available to the Company for making payment thereof due to the imposition of exchange controls or other circumstances beyond the control of the Company, the Company will be entitled to satisfy its obligations to Holders of the Securities by making such payment in Dollars in an amount equal to the Dollar equivalent of the amount payable in such other currency, as determined by the

Company by reference to the Exchange Rate on the date of such payment, or, if such rate is not then available, on the basis of the most recently available Exchange Rate. Notwithstanding the foregoing provisions of this Section 6.01, any payment made under such circumstances in Dollars where the required payment is in a currency other than Dollars will not constitute an Event of Default under this Indenture.

A Default under clause (4) or (7) of this Section 6.01 is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in principal amount of the then outstanding Securities of the series affected by such Default (or, in the case of a Default under clause (4) of this Section 6.01, if outstanding Securities of other series are affected by such Default, then at least 25% in principal amount of the then outstanding Securities so affected) notify the Company and the Trustee, of the Default, and the Company fails to cure the Default within 90 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default."

#### SECTION 6.02 *Acceleration.*

If an Event of Default with respect to any Securities of any series at the time outstanding (other than an Event of Default specified in clause (5) or (6) of Section 6.01) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in principal amount of the then outstanding Securities of the series affected by such Event of Default (or, in the case of an Event of Default described in clause (4) of Section 6.01, if outstanding Securities of other series are affected by such Event of Default, then at least 25% in principal amount of the then outstanding Securities so affected) by notice to the Company and the Trustee, may declare the principal of (or, if any such Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) and all accrued and unpaid interest on all then outstanding Securities of such series or of all series, as the case may be, to be due and payable. Upon any such declaration, the amounts due and payable on the Securities shall be due and payable immediately. If an Event of Default specified in clause (5) or (6) of Section 6.01 hereof occurs, such amounts shall ipso facto become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee or any Holder. The Holders of a majority in principal amount of the then outstanding Securities of the series affected by such Event of Default or all series, as the case may be, by written notice to the Trustee may rescind an acceleration and its consequences (other than nonpayment of principal of or premium or interest on or any Additional Amounts with respect to the Securities) if the rescission would not conflict with any judgment or decree and if all existing Events of Default with respect to Securities of that series (or of all series, as the case may be) have been cured or waived, except nonpayment of principal, premium, interest or any Additional Amounts that has become due solely because of the acceleration.

#### SECTION 6.03 *Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, or premium, if any, or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

#### SECTION 6.04 *Waiver of Defaults.*

Subject to Sections 6.07 and 9.02, the Holders of a majority in principal amount of the then outstanding Securities of any series or of all series (acting as one class) by notice to the Trustee may waive an existing or past Default or Event of Default with respect to such series or all series, as the case may be, and its consequences (including waivers obtained in connection with a tender offer or exchange offer for Securities of such series or all series or a solicitation of consents in respect of Securities of such series or all series, provided that in each case such offer or solicitation is made to all Holders of then outstanding Securities of such series or all series (but the terms of such offer or solicitation may vary from series to series)), except (1) a continuing Default or Event of Default in the payment of the principal of, or premium, if any, or interest on or any Additional Amounts with respect to any Security or (2) a continued Default in respect of a provision that under Section 9.02 cannot be amended or

supplemented without the consent of each Holder affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

*SECTION 6.05 Control by Majority.*

With respect to Securities of any series, the Holders of a majority in principal amount of the then outstanding Securities of such series may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it relating to or arising under an Event of Default described in clause (1), (2), (3) or (7) of Section 6.01, and with respect to all Securities, the Holders of a majority in principal amount of all the then outstanding Securities affected may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it not relating to or arising under such an Event of Default. However, the Trustee may refuse to follow any direction that conflicts with applicable law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders, or that may involve the Trustee in personal liability; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion from Holders directing the Trustee against all losses and expenses caused by taking or not taking such action.

*SECTION 6.06 Limitations on Suits.*

Subject to Section 6.07 hereof, a Holder of a Security of any series may pursue a remedy with respect to this Indenture or the Securities of such series only if:

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to such series;
- (2) the Holders of at least 25% in principal amount of the then outstanding Securities of such series make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) during such 60-day period the Holders of a majority in principal amount of the Securities of that series do not give the Trustee a direction inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

*SECTION 6.07 Rights of Holders to Receive Payment.*

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of principal of and premium, if any, and interest on and any Additional Amounts with respect to the Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

*SECTION 6.08 Collection Suit by Trustee.*

If an Event of Default specified in clause (1) or (2) of Section 6.01 hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the amount of principal, premium (if any), interest and any Additional Amounts remaining unpaid on the Securities of



the series affected by the Event of Default, and interest on overdue principal and premium, if any, and, to the extent lawful, interest on overdue interest, and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

*SECTION 6.09 Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents and to take such actions, including participating as a member, voting or otherwise, of any committee of creditors, as may be necessary or advisable to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company or its creditors or properties and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any Bankruptcy Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the Holders of the Securities may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

*SECTION 6.10 Priorities.*

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

First: to the Trustee for amounts due under Section 7.07;

Second: to Holders for amounts due and unpaid on the Securities in respect of which or for the benefit of which such money has been collected, for principal, premium (if any), interest and any Additional Amounts ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium (if any), interest and any Additional Amounts, respectively; and

Third: to the Company.

The Trustee, upon prior written notice to the Company, may fix record dates and payment dates for any payment to Holders pursuant to this Article VI.

To the fullest extent allowed under applicable law, if for the purpose of obtaining a judgment against the Company in any court it is necessary to convert the sum due in respect of the principal of, premium (if any) or interest on or Additional Amounts with respect to the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the Business Day in The City of New York next preceding that on which final judgment is given. Neither the Company nor the Trustee shall be liable for any shortfall nor shall it benefit from any windfall in payments to Holders of Securities under this Section 6.10 caused by a change in exchange rates between the time the amount of a judgment against it is calculated as above and the time the Trustee converts the Judgment Currency into the Required Currency to make payments under this Section 6.10 to Holders of Securities, but payment of such judgment shall discharge all amounts owed by the Company on the claim or claims underlying such judgment.

SECTION 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07, or a suit by a Holder or Holders of more than 10% in principal amount of the then outstanding Securities of any series.

**ARTICLE VII**  
**TRUSTEE**

SECTION 7.01 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in such exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default with respect to the Securities of any series:

(1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine such certificates and opinions to determine whether, on their face, they appear to conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of Section 7.01(b);

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

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Section 7.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law. All money received by the Trustee shall, until applied as herein provided, be held in trust for the payment of the principal of, premium (if any) and interest on and Additional Amounts with respect to the Securities.

SECTION 7.02 *Rights of Trustee.*

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require instruction, an Officers' Certificate or an Opinion of Counsel or both to be provided. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such instruction, Officers' Certificate or Opinion of Counsel. The Trustee may consult at the Company's expense with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

SECTION 7.03 *May Hold Securities.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any of its Affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights and duties. However, the Trustee is subject to Sections 7.10 and 7.11.

SECTION 7.04 *Trustee's Disclaimer.*

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision hereof, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee and it shall not be responsible for any statement or recital herein or any statement in the Securities other than its certificate of authentication.

SECTION 7.05 *Notice of Defaults.*

If a Default or Event of Default with respect to the Securities of any series occurs and is continuing and it is known to the Trustee, the Trustee shall mail to Holders of Securities of such series a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium (if any) and interest on and Additional Amounts or any sinking fund installment with respect to the Securities of such series, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of Holders of Securities of such series.

SECTION 7.06 *Reports by Trustee to Holders.*

Within 60 days after \_\_\_\_\_ of each year after the execution of this Indenture, the Trustee shall mail to Holders of a series and the Company a brief report dated as of such reporting date that complies with TIA § 313(a); *provided, however*, that if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date with respect to a series, no report need be transmitted to Holders of such series. The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports if and as required by TIA §§ 313(c) and 313(d).

A copy of each report at the time of its mailing to Holders of a series of Securities shall be filed by the Company with the SEC and each securities exchange, if any, on which the Securities of such series are listed. The Company shall notify the Trustee if and when any series of Securities is listed on any securities exchange.

#### SECTION 7.07 *Compensation and Indemnity.*

The Company agrees to pay to the Trustee for its acceptance of this Indenture and services hereunder such compensation as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company agrees to reimburse the Trustee upon request for all reasonable disbursements, advances and expenses incurred by it. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company hereby indemnifies the Trustee and any predecessor Trustee against any and all loss, liability, damage, claim or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, except as set forth in the next following paragraph. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel; provided that the Company shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Company and the Trustee in connection with such defense. The Company need not pay for any settlement made without its consent.

The Company shall not be obligated to reimburse any expense or indemnify against any loss or liability incurred by the Trustee through the Trustee's negligence or bad faith.

To secure the payment obligations of the Company in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of any series. Such lien and the Company's obligations under this Section 7.07 shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in clauses (5) or (6) of Section 6.01 occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

#### SECTION 7.08 *Replacement of Trustee.*

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

The Trustee may resign and be discharged at any time with respect to the Securities of one or more series by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Securities of any series may remove the Trustee with respect to the Securities of such series by so notifying the Trustee and the Company. The Company may remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (3) a Bankruptcy Custodian or public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, with respect to the Securities of one or more series, the Company shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series). Within one year after the successor Trustee with respect to the Securities of any series takes office, the Holders of a majority in principal amount of the Securities of such series then outstanding may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee with respect to the Securities of any series does not take office within 30 days after the retiring or removed Trustee resigns or is removed, the retiring or removed Trustee, the Company or the Holders of at least 10% in principal amount of the then outstanding Securities of such series may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

If the Trustee with respect to the Securities of a series fails to comply with Section 7.10, any Holder of Securities of such series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the Securities of such series.

In case of the appointment of a successor Trustee with respect to all Securities, each such successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the retiring Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

In case of the appointment of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more (but not all) series shall execute and deliver an indenture supplemental hereto in which each successor Trustee shall accept such appointment and that (1) shall confer to each successor Trustee all the rights, powers and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall confirm that all the rights, powers and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee. Nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, and each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee. Upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee shall have all the rights, powers and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates. On request of the Company or any successor Trustee, such retiring Trustee shall transfer to such successor Trustee all property held by such retiring Trustee as Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Notwithstanding replacement of the Trustee or Trustees pursuant to this Section 7.08, the obligations of the Company under Section 7.07 shall continue for the benefit of the retiring Trustee or Trustees.

So long as no Event of Default, or no event which is, or after notice or lapse of time, or both, would become, an Event of Default, shall have occurred and be continuing, and except with respect to a Trustee appointed by the act of the Holders of a majority in principal amount of then outstanding Securities of any series, if the Company shall have delivered to the Trustee (1) a Board Resolution appointing a successor Trustee, effective as of a date specified therein (which date shall be no sooner than 45 days after the date of such delivery, unless a shorter period shall be acceptable to the Trustee), and (2) an instrument of acceptance of such appointment, effective as of such date, by such successor Trustee, then the Trustee shall be deemed removed, the successor Trustee shall be deemed to have been appointed by the Company and such appointment shall be deemed to have been accepted as contemplated, all as of such date, and all other provisions of this Section 7.08 shall be applicable to such removal, appointment and acceptance except to the extent inconsistent with this paragraph.

#### SECTION 7.09 *Successor Trustee by Merger, etc.*

Subject to Section 7.10, if the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee; *provided, however*, that in the case of a transfer of all or substantially all of its corporate trust business to another corporation, the transferee corporation expressly assumes all of the Trustee's liabilities hereunder.

In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

*SECTION 7.10 Eligibility; Disqualification.*

There shall at all times be a Trustee hereunder which shall be a corporation or banking or trust company or association organized and doing business under the laws of the United States, any State thereof or the District of Columbia and authorized under such laws to exercise corporate trust power, shall be subject to supervision or examination by Federal or State (or the District of Columbia) authority and shall have, or be a subsidiary of a bank or bank holding company having, a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition.

The Indenture shall always have a Trustee who satisfies the requirements of TIA §§ 310(a)(1), 310(a)(2) and 310(a)(5). The Trustee is subject to and shall comply with the provisions of TIA § 310(b) during the period of time required by this Indenture. Nothing in this Indenture shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA § 310(b).

*SECTION 7.11 Preferential Collection of Claims Against the Company.*

The Trustee is subject to and shall comply with the provisions of TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

**ARTICLE VIII  
DISCHARGE OF INDENTURE**

*SECTION 8.01 Termination of the Company's Obligations.*

(a) This Indenture shall cease to be of further effect with respect to the Securities of a series (except that the Company's obligations under Section 7.07, the Trustee's and Paying Agent's obligations under Section 8.03 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive), and the Trustee, on demand of the Company, shall execute proper instruments acknowledging the satisfaction and discharge of this Indenture with respect to the Securities of such series, when:

(1) either:

(A) all outstanding Securities of such series theretofore authenticated and issued (other than destroyed, lost or stolen Securities that have been replaced or paid) have been delivered to the Trustee for cancellation; or

(B) all outstanding Securities of such series not theretofore delivered to the Trustee for cancellation:

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and, in the case of clause (i), (ii) or (iii) above, the Company has irrevocably deposited or caused to be deposited with the Trustee as funds (immediately available to the Holders in the case of clause (i)) in trust for such purpose (x) cash in an amount, or (y) Government Obligations, maturing as to principal and interest at such times and in such amounts as will ensure the availability of cash in an amount or (z) a combination thereof, which will be sufficient, in the opinion (in the case of clauses (y) and (z)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on the Securities of such series for principal and interest to the date of such deposit (in the case of Securities which have become due and payable) or for principal, premium, if any, and interest to the Stated Maturity or Redemption Date, as the case may be; or

(C) the Company has properly fulfilled such other means of satisfaction and discharge as is specified, as contemplated by Section 2.01, to be applicable to the Securities of such series;

(2) the Company has paid or caused to be paid all other sums payable by it hereunder with respect to the Securities of such series; and

(3) the Company has delivered to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such series have been complied with, together with an Opinion of Counsel to the same effect.

(b) Unless this Section 8.01(b) is specified as not being applicable to Securities of a series as contemplated by Section 2.01, the Company may, at its option, terminate certain of its obligations under this Indenture ("Covenant Defeasance") with respect to the Securities of a series if:

(1) the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of Securities of such series, (i) money in the currency in which payment of the Securities of such series is to be made in an amount, or (ii) Government Obligations with respect to such series, maturing as to principal and interest at such times and in such amounts as will ensure the availability of money in the currency in which payment of the Securities of such series is to be made in an amount or (iii) a combination thereof, that is sufficient, in the opinion (in the case of clauses (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay the principal of and premium (if any) and interest on all Securities of such series on each date that such principal, premium (if any) or interest is due and payable and (at the Stated Maturity thereof or upon redemption as provided in Section 8.01(e)) to pay all other sums payable by it hereunder; provided that the Trustee shall have been irrevocably instructed to apply such money and/or the proceeds of such Government Obligations to the payment of said principal, premium (if any) and interest with respect to the Securities of such series as the same shall become due;

(2) the Company has delivered to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such series have been complied with, and an Opinion of Counsel to the same effect;

(3) no Default or Event of Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit;

(4) the Company shall have delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee or a tax ruling to the effect that the Holders will not recognize income, gain or loss for U.S. Federal income tax purposes as a result of the Company's exercise of its option under this Section 8.01(b) and will be subject to U.S. Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised;

(5) the Company has complied with any additional conditions specified pursuant to Section 2.01 to be applicable to the discharge of Securities of such series pursuant to this Section 8.01; and

(6) such deposit and discharge shall not cause the Trustee to have a conflicting interest as defined in TIA § 310(b).

In such event, this Indenture shall cease to be of further effect (except as set forth in this paragraph), and the Trustee, on demand of the Company, shall execute proper instruments acknowledging satisfaction and discharge under this Indenture. However, the Company's obligations in Sections 2.05, 2.06, 2.07, 2.08, 2.09, 4.01, 4.02, 7.07, 7.08 and 8.04, the Trustee's and Paying Agent's obligations in Section 8.03 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive until all Securities of such series are no longer outstanding. Thereafter, only the Company's obligations in Section 7.07 and the Trustee's and Paying Agent's obligations in Section 8.03 shall survive with respect to Securities of such series.

After such irrevocable deposit made pursuant to this Section 8.01(b) and satisfaction of the other conditions set forth herein, the Trustee upon request shall acknowledge in writing the discharge of the Company's obligations under this Indenture with respect to the Securities of such series except for those surviving obligations specified above.

In order to have money available on a payment date to pay principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities, the Government Obligations shall be payable as to such amounts on or before such payment date in such amounts as will provide the necessary money. Government Obligations shall not be callable at the issuer's option.

(c) If the Company has previously complied or is concurrently complying with Section 8.01(b) (other than any additional conditions specified pursuant to Section 2.01 that are expressly applicable only to covenant defeasance) with respect to Securities of a series, then, unless this Section 8.01(c) is specified as not being applicable to Securities of such series as contemplated by Section 2.01, the Company may elect that its obligations to make payments with respect to Securities of such series be discharged ("Legal Defeasance"), if:

(1) no Default or Event of Default under clauses (5) and (6) of Section 6.01 hereof shall have occurred at any time during the period ending on the 91st day after the date of deposit contemplated by Section 8.01(b) (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(2) unless otherwise specified with respect to Securities of such series as contemplated by Section 2.01, the Company has delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee to the effect referred to in Section 8.01(b)(4) with respect to such legal defeasance, which opinion is based on (i) a private ruling of the Internal Revenue Service addressed to the Company, (ii) a published ruling of the Internal Revenue Service pertaining to a comparable form of transaction or (iii) a change in the applicable federal income tax law (including regulations) after the date of this Indenture;

(3) the Company has complied with any other conditions specified pursuant to Section 2.01 to be applicable to the legal defeasance of Securities of such series pursuant to this Section 8.01(c); and

(4) the Company has delivered to the Trustee a Company Request requesting such legal defeasance of the Securities of such series and an Officers' Certificate stating that all conditions precedent with respect to such legal defeasance of the Securities of such series have been complied with, together with an Opinion of Counsel to the same effect.

In such event, the Company will be discharged from its obligations under this Indenture and the Securities of such series to pay principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of such series, the Company's obligations under Sections 4.01 and 4.02 shall terminate with respect to such Securities, and the entire indebtedness of the Company evidenced by such Securities shall be deemed paid and discharged.

(d) If and to the extent additional or alternative means of satisfaction, discharge or defeasance of Securities of a series are specified to be applicable to such series as contemplated by Section 2.01, the Company may terminate



any or all of its obligations under this Indenture with respect to Securities of a series and any or all of its obligations under the Securities of such series if it fulfills such other means of satisfaction and discharge as may be so specified, as contemplated by Section 2.01, to be applicable to the Securities of such series.

(e) If Securities of any series subject to subsections (a), (b), (c) or (d) of this Section 8.01 are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory or optional sinking fund provisions, the terms of the applicable trust arrangement shall provide for such redemption, and the Company shall make such arrangements as are reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

**SECTION 8.02 *Application of Trust Money.***

The Trustee or a trustee satisfactory to the Trustee and the Company shall hold in trust money or Government Obligations deposited with it pursuant to Section 8.01 hereof. It shall apply the deposited money and the money from Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series with respect to which the deposit was made.

**SECTION 8.03 *Repayment to Company.***

The Trustee and the Paying Agent shall promptly pay to the Company any excess money or Government Obligations (or proceeds therefrom) held by them at any time upon the written request of the Company.

Subject to the requirements of any applicable abandoned property laws, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal, premium (if any), interest or any Additional Amounts that remain unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and the Paying Agent with respect to such money shall cease.

**SECTION 8.04 *Reinstatement.***

If the Trustee or the Paying Agent is unable to apply any money or Government Obligations deposited with respect to Securities of any series in accordance with Section 8.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture with respect to the Securities of such series and under the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money or Government Obligations in accordance with Section 8.01; *provided, however*, that if the Company has made any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Obligations held by the Trustee or the Paying Agent.

**ARTICLE IX  
SUPPLEMENTAL INDENTURES AND AMENDMENTS**

**SECTION 9.01 *Without Consent of Holders.***

The Company and the Trustee may amend or supplement this Indenture or the Securities or waive any provision hereof or thereof without the consent of any Holder:

- (1) to cure any ambiguity, omission, defect or inconsistency that does not adversely affect Holders of Securities of the relevant series in any material respect;
- (2) to comply with Section 5.01;

(3) to provide for uncertificated Securities in addition to or in place of certificated Securities, or to provide for the issuance of bearer Securities (with or without coupons);

(4) to provide any security for, or to add any guarantees of or additional obligors on, any series of Securities;

(5) to comply with any requirement in order to effect or maintain the qualification of this Indenture under the TIA;

(6) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series), or to surrender any right or power herein conferred upon the Company;

(7) to add any additional Events of Default with respect to all or any series of the Securities (and, if any Event of Default is applicable to less than all series of Securities, specifying the series to which such Event of Default is applicable);

(8) to change or eliminate any of the provisions of this Indenture; provided that any such change or elimination shall become effective only when there is no outstanding Security of any series created prior to the execution of such amendment or supplemental indenture that is adversely affected in any material respect by such change in or elimination of such provision;

(9) to establish the form or terms of Securities of any series as permitted by Section 2.01;

(10) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Section 8.01; *provided, however*, that any such action shall not adversely affect the interest of the Holders of Securities of such series or any other series of Securities in any material respect;

(11) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 7.08;

(12) to add circumstances under which the Company will pay additional interest on the Securities of the relevant series; or

(13) to conform the text of this Indenture or any Securities to the description thereof in any prospectus or prospectus supplement of the Company with respect to the offer and sale of Securities of any series, to the extent that such provision is inconsistent with a provision of this Indenture or the Securities.

Upon the request of the Company, accompanied by a Board Resolution, and upon receipt by the Trustee of the documents described in Section 9.06, the Trustee shall, subject to Section 9.06, join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and make any further appropriate agreements and stipulations that may be therein contained.

#### SECTION 9.02 *With Consent of Holders.*

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture with the written consent (including consents obtained in connection with a tender offer or exchange offer for Securities of any one or more series or all series or a solicitation of consents in respect of Securities of any one or more series or all series, provided that in each case such offer or solicitation is made to all Holders of then outstanding Securities of each such series (but the terms of such offer or solicitation may vary from series to series)) of the Holders of at least a majority in principal amount of the then outstanding Securities of all series affected by such amendment or supplement (acting as one class).

Upon the request of the Company, accompanied by a Board Resolution, and upon the filing with the Trustee of evidence of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Section 9.06, the Trustee shall, subject to Section 9.06, join with the Company in the execution of such amendment or supplemental indenture.

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

The Holders of a majority in principal amount of the then outstanding Securities of one or more series or of all series may waive compliance in a particular instance by the Company with any provision of this Indenture with respect to Securities of such series (including waivers obtained in connection with a tender offer or exchange offer for Securities of such series or a solicitation of consents in respect of Securities of such series, provided that in each case such offer or solicitation is made to all Holders of then outstanding Securities of such series (but the terms of such offer or solicitation may vary from series to series)).

However, without the consent of each Holder of each Outstanding Security affected, an amendment, supplement or waiver under this Section 9.02 may not:

- (1) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the rate of or change the time for payment of interest, including default interest, on any Security;
- (3) reduce the principal of, any premium on or any mandatory sinking fund payment with respect to, or change the Stated Maturity of, any Security or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.02;
- (4) reduce the premium, if any, payable upon the redemption of any Security or change the time at which any Security may or shall be redeemed;
- (5) change any obligation of the Company to pay Additional Amounts with respect to any Security;
- (6) change the coin or currency or currencies (including composite currencies) in which any Security or any premium, interest or Additional Amounts with respect thereto are payable;
- (7) impair the right to institute suit for the enforcement of any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Security pursuant to Sections 6.07 and 6.08, except as limited by Section 6.06;
- (8) make any change in the percentage of principal amount of Securities necessary to waive compliance with certain provisions of this Indenture pursuant to Section 6.04 or 6.07 or make any change in this sentence of Section 9.02; or
- (9) waive a continuing Default or Event of Default in the payment of principal of, premium (if any) or interest on or Additional Amounts with respect to the Securities.

A supplemental indenture that changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

The right of any Holder to participate in any consent required or sought pursuant to any provision of this Indenture (and the obligation of the Company to obtain any such consent otherwise required from such Holder) may be subject to the requirement that such Holder shall have been the Holder of record of any Securities with respect to which such consent is required or sought as of a date identified by the Company in a notice furnished to Holders in accordance with the terms of this Indenture.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall mail to the Holders of each Security affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

*SECTION 9.03 Compliance with Trust Indenture Act.*

Every amendment or supplement to this Indenture or the Securities shall comply in form and substance with the TIA as then in effect.

*SECTION 9.04 Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his or her Security or portion of a Security if the Trustee receives written notice of revocation before a date and time therefor identified by the Company in a notice furnished to such Holder in accordance with the terms of this Indenture or, if no such date and time shall be identified, the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Company may, but shall not be obligated to, fix a record date (which need not comply with TIA § 316(c)) for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver or to take any other action under this Indenture. If a record date is fixed, then notwithstanding the provisions of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to consent to such amendment, supplement or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No consent shall be valid or effective for more than 90 days after such record date unless consents from Holders of the principal amount of Securities required hereunder for such amendment or waiver to be effective shall have also been given and not revoked within such 90-day period.

After an amendment, supplement or waiver becomes effective, it shall bind every Holder, unless it is of the type described in any of clauses (1) through (9) of Section 9.02 hereof. In such case, the amendment, supplement or waiver shall bind each Holder who has consented to it and every subsequent Holder that evidences the same debt as the consenting Holder's Security.

*SECTION 9.05 Notation on or Exchange of Securities.*

If an amendment or supplement changes the terms of an outstanding Security, the Company may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security at the request of the Company regarding the changed terms and return it to the Holder. Alternatively, if the Company so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment or supplement.

Securities of any series authenticated and delivered after the execution of any amendment or supplement may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such amendment or supplement.

The Trustee shall sign any amendment or supplement authorized pursuant to this Article if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment or supplement, the Trustee shall be entitled to receive, and, subject to Section 7.01 hereof, shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel provided at the expense of the Company as conclusive evidence that such amendment or supplement is authorized or permitted by this Indenture, that it is not inconsistent herewith, and that it will be valid and binding upon the Company in accordance with its terms.

## **ARTICLE X GUARANTEES**

Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed by such Guarantors as shall be established pursuant to Section 2.01 with respect to the Securities of such series. The Persons who shall initially be the Guarantors of the Securities of any such series may include any and all Persons as the Company may determine; provided that, prior to the authentication and delivery upon original issuance of Securities that are to be guaranteed by such Person or Persons, the Company, the Trustee and such Person or Persons shall enter into a supplemental indenture pursuant to Section 9.01 hereof whereby such Person or Persons shall become a Guarantor under this Indenture.

Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed in accordance with the terms of such Guarantees as established pursuant to Section 2.01 with respect to such Securities and such Guarantees thereof and (except as otherwise specified as contemplated by Section 2.01 for such Securities and such Guarantees thereof) in accordance with this Article.

Each Guarantor of any Security hereby fully and unconditionally guarantees to each Holder of such Security, and to the Trustee on behalf of such Holder, the due and punctual payment of the principal of, and premium, if any, and interest, if any, on such Security when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of such Security and of this Indenture. In case of the failure of the Company punctually to make any such payment, such Guarantor hereby agrees to cause such payment to be made punctually when and as the same shall become due and payable, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, and as if such payment were made by the Company.

The Guarantor of any Security hereby agrees that its obligations hereunder shall be absolute and unconditional irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of such Security or this Indenture, any failure to enforce the provisions of such Security or this Indenture, or any waiver, modification or indulgence granted to the Company with respect thereto, by the Holder of such Security or the Trustee or any other circumstance which may otherwise constitute a legal or equitable discharge or defense of a surety or guarantor; provided, however, that, notwithstanding the foregoing, no such waiver, modification or indulgence shall, without the consent of any Guarantor, increase the principal amount of such Security, or increase the interest rate thereon, change any redemption provisions thereof (including any change to increase any premium payable upon redemption thereof) or change the Stated Maturity of any payment thereon, or increase the principal amount of any Original Issue Discount Security that would be due and payable upon a declaration of acceleration or the maturity thereof pursuant to Section 6.02 of this Indenture.

The Guarantor of any Security hereby waives the benefits of diligence, presentment, demand for payment, any requirement that the Trustee or any of the Holders exhaust any right or take any action against the Company or any other Person, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest or notice with respect to any Security or the indebtedness evidenced thereby and all demands whatsoever, and covenants that its obligations hereunder will not be discharged in respect of such Security except by complete performance of the obligations of such Guarantor contained in such Security and in this Indenture. Any Guarantee of any Guarantor hereunder shall constitute a guaranty of payment and not of collection. The Guarantor of any Security hereby agrees that, in the event of a default in payment of principal, or premium, if any, or interest, if any, on such Security, whether at its Stated Maturity, by declaration of

acceleration, call for redemption or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Security, subject to the terms and conditions set forth in this Indenture, directly against such Guarantor to enforce the obligation of such Guarantor hereunder without first proceeding against the Company.

The obligations of the Guarantor of any Security hereunder with respect to such Security shall be continuing and irrevocable until the date upon which the entire principal of, premium, if any, and interest, if any, on such Security has been, or has been deemed pursuant to the provisions of Article IV of this Indenture to have been, paid in full or otherwise discharged.

The Guarantor of any Security shall be subrogated to all rights of the Holders of such Security against the Company in respect of any amounts paid by the Guarantor on account of such Security pursuant to the provisions of this Indenture; provided, however, that such Guarantor shall not be entitled to enforce or to receive any payments arising out of, or based upon, such right of subrogation until the principal of, and premium, if any, and interest, if any, on all Securities issued hereunder that are due and payable shall have been paid in full.

The Guarantee by any Guarantor of any Security shall remain in full force and effect and continue notwithstanding any petition filed by or against the Company for liquidation or reorganization, the Company becoming insolvent or making an assignment for the benefit of creditors or a receiver or trustee being appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or reinstated, as the case may be, if at any time payment of such Security, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any Holder of such Security, whether as a "voidable preference," "fraudulent transfer," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned on a Security, such Security shall, to the fullest extent permitted by law, be reinstated and deemed paid only by such amount paid and not so rescinded, reduced, restored or returned.

No Guarantor shall consolidate with or merge into any other Person or sell, convey or transfer all or substantially all its properties and assets to any Person, and no Guarantor shall permit any Person to consolidate with or merge into such Guarantor, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance or transfer is made is an Affiliate of the Company, and no Guarantor shall lease all or substantially all its properties and assets to any Person (whether or not such an Affiliate), unless, in any such case:

(1) in case such Guarantor shall consolidate with or merge into another Person or sell, convey, transfer or lease all or substantially all its properties and assets to any Person, the Person formed by such consolidation or into which such Guarantor is merged or the Person which acquires by sale, conveyance or transfer, or which leases, all or substantially all the properties and assets of such Guarantor shall be a corporation, partnership or trust, shall be organized and validly existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the performance or observance of every covenant of this Indenture and any Guarantees on the part of such Guarantor to be performed or observed;

(2) immediately after giving effect to such transaction no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(3) such Guarantor has delivered to the Trustee a Guarantor's Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation of any Guarantor with, or merger of such Guarantor into, any other Person or any sale, conveyance, transfer or lease of all or substantially all the properties and assets of such Guarantor in accordance

with this paragraph, the successor Person formed by such consolidation or into which such Guarantor is merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, such Guarantor under this Indenture with the same effect as if such successor Person had been named as such Guarantor herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and any Guarantees of such Guarantor.

Upon (i) a consolidation or merger of any Guarantor with or into, or a sale, conveyance or transfer of all or substantially all the properties and assets of any Guarantor to, any other Person or any consolidation or merger of any Person with or into any Guarantor, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance or transfer is made is not an Affiliate of the Company or (ii) any sale, conveyance or transfer (including by way of merger) by the Company or any Subsidiary thereof of all or substantially all the Capital Stock of any Guarantor to any Person that is not an Affiliate of the Company, such Guarantor shall be deemed to be automatically and unconditionally released and discharged from all its obligations under its Guarantees and under this Article X without any further action required on the part of the Trustee or any Holder. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officers' Certificate certifying as to the compliance with this paragraph of Article X. The Company may, at its option, at any time and from time to time, cause any Guarantor to be automatically and unconditionally released and discharged from all its obligations under its Guarantees with respect to Securities of all series guaranteed by Guarantees of such Guarantor and under this Article X upon (i) any conditions for such release provided with respect to Securities of such series in accordance with Section 2.01 having been satisfied and (ii) delivery by the Company to the Trustee of a Company Order relating to such release and discharge. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officers' Certificate certifying as to the compliance with this paragraph of Article X.

Anything in this Indenture, the Securities or any Guarantee to the contrary notwithstanding, the obligations of any Guarantor under its Guarantees and this Indenture shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor, result in the obligations of such Guarantor under its Guarantees and this Indenture not constituting a fraudulent advance or fraudulent transfer under any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state or other law affecting the rights of creditors generally.

No Guarantee by any Guarantor of any Security, whether or not such Guarantee is or is to be endorsed thereon, shall be valid and obligatory for any purpose with respect to such Security until the certificate of authentication on such Security shall have been signed by or on behalf of the Trustee.

## **ARTICLE XI MISCELLANEOUS**

### **SECTION 11.01 *Trust Indenture Act Controls.***

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by operation of TIA § 318(c), the imposed duties shall control.

### **SECTION 11.02 *Notices.***

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

If to the Company:

Matador Resources Company  
5400 LBJ Freeway, Suite 1500

Dallas, Texas 75240  
Attn: Chief Financial Officer  
Telephone: (972) 371-5200

With a copy to:

Matador Resources Company  
5400 LBJ Freeway, Suite 1500  
Dallas, Texas 75240  
Attn: General Counsel  
Telephone: (972) 371-5200

And a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to the Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

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

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

Any notice or communication to a Holder shall be mailed by first-class mail, postage prepaid, to the Holder's address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except in the case of notice to the Trustee, it is duly given only when received.

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

All notices or communications, including without limitation notices to the Trustee or the Company by Holders, shall be in writing, except as otherwise set forth herein.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.



SECTION 11.03 *Communication by Holders with Other Holders.*

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 11.04 *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee at the expense of the Company:

- (1) an Officers' Certificate (which shall include the statements set forth in Section 11.05) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel (which shall include the statements set forth in Section 11.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been complied with.

SECTION 11.05 *Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) shall comply with the provisions of TIA § 314(e) and shall include:

- (1) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

SECTION 11.06 *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or the Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 11.07 *Legal Holidays.*

If a payment date is a Legal Holiday at a Place of Payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

SECTION 11.08 *No Recourse Against Others.*

A director, officer, employee, stockholder, partner or other owner of the Company or the Trustee, as such, shall not have any liability for any obligations of the Company under the Securities or for any obligations of the Company or the Trustee under this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release shall be part of the consideration for the issue of Securities.

SECTION 11.09 *Governing Law.*

**THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.**

SECTION 11.10 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or any Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 11.11 *Successors.*

All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 11.12 *Severability.*

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall, to the fullest extent permitted by applicable law, not in any way be affected or impaired thereby.

SECTION 11.13 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 11.14 *Table of Contents, Headings, etc.*

The table of contents, cross-reference table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

MATADOR RESOURCES COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FORM OF SUBORDINATED INDENTURE

**MATADOR RESOURCES COMPANY**

*as Issuer*

and

---

*as Trustee*

---

Indenture  
Dated as of \_\_\_\_\_ ,

---

Subordinated Debt Securities

**MATADOR RESOURCES COMPANY**

**Reconciliation and tie between Trust Indenture Act of 1939 and Indenture, dated as of** ,

Section of Trust Indenture Act of 1939		Section(s) of Indenture
§310	(a)(1)	7.10
	(a)(2)	7.10
	(a)(3)	Not Applicable
	(a)(4)	Not Applicable
	(a)(5)	7.10
§311	(b)	7.08, 7.10
	(a)	7.11
	(b)	7.11
§312	(c)	Not Applicable
	(a)	2.07
	(b)	12.03
§313	(c)	12.03
	(a)	7.06
	(b)	7.06
§314	(c)	7.06
	(d)	7.06
	(a)	4.03, 4.04
	(b)	Not Applicable
§315	(c)(1)	12.04
	(c)(2)	12.04
	(c)(3)	Not Applicable
	(d)	Not Applicable
	(e)	11.05
	(a)	7.01(b)
§316	(b)	7.05
	(c)	7.01(a)
	(d)	7.01(c)
	(d)(1)	7.01(c)(1)
	(d)(2)	7.01(c)(2)
	(d)(3)	7.01(c)(3)
	(e)	6.11
§317	(a)(1)(A)	6.05
	(a)(1)(B)	6.04
	(a)(2)	Not Applicable
	(a)(last sentence)	2.11
§318	(b)	6.07
	(a)(1)	6.08
	(a)(2)	6.09
§318	(b)	2.06
	(a)	12.01

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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INDENTURE dated as of \_\_\_\_\_, between Matador Resources Company, a Texas corporation (the “Company”), and \_\_\_\_\_, as trustee (the “Trustee”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company’s unsecured subordinated debentures, notes or other evidences of indebtedness (the “Securities”) to be issued from time to time in one or more series as provided in this Indenture:

**ARTICLE I**  
**DEFINITIONS AND INCORPORATION BY REFERENCE**

SECTION 1.01 *Definitions.*

“Additional Amounts” means any additional amounts required by the express terms of a Security or by or pursuant to a Board Resolution, under circumstances specified therein or pursuant thereto, to be paid by the Company with respect to certain taxes, assessments or other governmental charges imposed on certain Holders and that are owing to such Holders.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such specified Person. For purposes of this definition, “control” of a Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” shall have meanings correlative to the foregoing.

“Agent” means any Registrar or Paying Agent.

“Bankruptcy Law” means Title 11 of the United States Code or any similar federal, state or foreign law for the relief of debtors.

“Board of Directors” means the Board of Directors of the Company or any committee thereof duly authorized, with respect to any particular matter, to act by or on behalf of the Board of Directors of the Company.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“Business Day” means any day that is not a Legal Holiday.

“Capitalized Lease Obligation” of any Person means any obligation of such Person to pay rent or other amounts under a lease of property, real or personal, that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Company” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person; *provided, however*, that for purposes of any provision contained herein which is required by the TIA, “Company” shall also mean each other obligor (if any) on the Securities of a series.

“Company Order” and “Company Request” mean, respectively, a written order or request signed in the name of the Company by two Officers of the Company, and delivered to the Trustee.

“Corporate Trust Office of the Trustee” means the office of the Trustee located at \_\_\_\_\_, Attention: \_\_\_\_\_, and as may be located at such other address as the Trustee may give notice to the Company.

“Debt” of any Person means, without duplication: (i) all indebtedness or obligations of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof); (ii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments; (iii) all obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto), other than standby letters of credit, bid or performance bonds and other obligations issued by or for the account of such Person in the ordinary course of business; (iv) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, except trade payables and accrued expenses incurred in the ordinary course of business; (v) all Capitalized Lease Obligations of such Person; (vi) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person (provided that if the obligations so secured have not been assumed in full by such Person or are not otherwise such Person’s legal liability in full, then such obligations shall be deemed to be in an amount equal to the greater of (a) the lesser of (1) the full amount of such obligations and (2) the fair market value of such assets, as determined in good faith by the Board of Directors of such Person, which determination shall be evidenced by a Board Resolution, and (b) the amount of obligations as have been assumed by such Person or which are otherwise such Person’s legal liability); and (vii) all Debt of others (other than endorsements in the ordinary course of business) guaranteed by such Person to the extent of such guarantee.

“Default” means any event, act or condition that is, or after notice or the passage of time or both would be, an Event of Default.

“Depositary” means, with respect to the Securities of any series issuable or issued in whole or in part in global form, the Person specified pursuant to Section 2.01 hereof as the initial Depositary with respect to the Securities of such series, until a successor shall have been appointed and become such pursuant to the applicable provision of this Indenture, and thereafter “Depositary” shall mean or include such successor.

“Dollar” or “\$” means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debt.

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

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect from time to time.

“Global Security” means a Security that is issued in global form in the name of the Depositary, or its nominee with respect thereto.

“Government Obligations” means, with respect to a series of Securities, direct obligations of the government that issues the currency in which the Securities of the series are payable for the payment of which the full faith and credit of such government is pledged, or obligations of a Person controlled or supervised by and acting as an agency or instrumentality of such government, the payment of which is unconditionally guaranteed as a full faith and credit obligation by such government.

“Guarantee” means a guarantee of any Securities by a Guarantor as contemplated by Article XI; provided that the term “Guarantee,” when used with respect to any Security or with respect to the Securities of any series, means a guarantee of such Security or of the Securities of such series, respectively, by a Guarantor of such Security or of the Securities of such series, respectively, as contemplated by Article XI.

“Guarantor” means each Person who shall become a Guarantor under this Indenture pursuant to Section 9.01 hereof, in each case unless and until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, at which time references to such Guarantor shall mean such successor Person; provided that (i) the term “Guarantor,” when used, with respect to the Securities of any series, means the Persons who shall from time to time be the guarantors of Securities of such series as contemplated by Article XI;

and (ii) any Person constituting a Guarantor with respect to the Securities of a series shall cease to constitute a Guarantor with respect to Securities of such series when its Guarantee is released with respect to Securities of such series in accordance with the terms of this Indenture.

“Guarantor’s Officers’ Certificate” means, with respect to any Guarantor, a certificate signed by any two of the following: a Chairman of the Board, a Chief Executive Officer, a President, a Vice President, a Treasurer, an Assistant Treasurer, a Secretary or an Assistant Secretary of such Guarantor (or, if such Guarantor is a partnership that has no such officers, of a general partner of such Guarantor), or any other officer or officers of such Guarantor (or of such a general partner) designated in a writing by or pursuant to authority of such Guarantor’s Board of Directors and delivered to the Trustee from time to time.

“Holder” means a Person in whose name a Security is registered.

“Indenture” means this Indenture as amended or supplemented from time to time pursuant to the provisions hereof, and includes the terms of a particular series of Securities established as contemplated by Section 2.01.

“Interest” means, with respect to an Original Issue Discount Security that by its terms bears interest only after Maturity, interest payable after Maturity and when used with respect to any Security, means all amounts of interest accruing on such Security, including any default interest.

“Interest Payment Date,” when used with respect to any Security, shall have the meaning assigned to such term in the Security as contemplated by Section 2.01.

“Issue Date” means, with respect to Securities of a series, the date on which the Securities of such series are originally issued under this Indenture.

“Legal Holiday” means a Saturday, a Sunday or a day on which banking institutions in any of The City of New York, New York; Dallas, Texas or a Place of Payment are authorized or obligated by law, regulation or executive order to remain closed.

“Maturity” means, with respect to any Security, the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity thereof, or by declaration of acceleration, call for redemption or otherwise.

“Officer” means the Chairman of the Board, the President, the Chief Executive Officer, any Vice President, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary of a Person.

“Officers’ Certificate” means a certificate signed by two Officers of a Person.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. Such counsel may be an employee of or counsel to the Company or the Trustee.

“Original Issue Discount Security” means any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.02.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or other agency, instrumentality or political subdivision thereof or other entity of any kind.

“Place of Payment” means, with respect to the Securities of any series, the place or places where the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of that series are payable as specified in accordance with Section 2.01 subject to the provisions of Section 4.02.

“Principal” of a Security means the principal of the Security plus, when appropriate, the premium, if any, on the Security.

“Redemption Date” means, with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

“Redemption Price” means, with respect to any Security to be redeemed, the price at which it is to be redeemed pursuant to this Indenture.

“Responsible Officer” means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Rule 144A Securities” means Securities of a series designated pursuant to Section 2.01 as entitled to the benefits of Section 4.03(b).

“SEC” means the Securities and Exchange Commission.

“Securities” has the meaning stated in the preamble of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“Security Custodian” means, with respect to Securities of a series issued in global form, the Trustee for Securities of such series, as custodian with respect to the Securities of such series, or any successor entity thereto.

“Senior Debt” of the Company, unless otherwise provided with respect to the Securities of a series as contemplated by Section 2.01, means (i) all Debt of the Company, whether currently outstanding or hereafter created, incurred or assumed, unless, by the terms of the instrument creating or evidencing such Debt or pursuant to which such Debt is outstanding, it is provided that such Debt is not superior in right of payment to the Securities or to other Debt which is *pari passu* with or subordinated to the Securities, and (ii) any modifications, refunding, deferrals, renewals or extensions of any such Debt or any securities, notes or other evidences of Debt issued in exchange for such Debt; *provided* that, unless otherwise provided with respect to the Securities of a series as contemplated by Section 2.01, in no event shall “Senior Debt” include (a) Debt of the Company owed or owing to any Subsidiary or any officer, director or employee of the Company or any Subsidiary, (b) Debt to trade creditors or (c) any liability for taxes owed or owing by the Company.

“Stated Maturity” means, when used with respect to any Security or any installment of principal thereof or interest thereon, the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“Subsidiary” of a Person means an Affiliate controlled by such Person directly, or indirectly through one or more intermediaries.

“TIA” means the Trust Indenture Act of 1939, as amended, as in effect on the date hereof.

“Trustee” means the Person named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture, and thereafter “Trustee” means each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series means the Trustee with respect to Securities of that series.

“United States” means the United States of America (including the States and the District of Columbia) and its territories and possessions, which include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

SECTION 1.02 *Other Definitions.*

<u>Term</u>	<u>Defined in Section</u>
“Agent Members”	2.17
“Bankruptcy Custodian”	6.01
“Covenant Defeasance”	8.01
“Event of Default”	6.01
“Exchange Rate”	2.11
“Interest Payment Date”	2.07
“Judgment Currency”	6.10
“Legal Defeasance”	8.01
“Mandatory Sinking Fund Payment”	3.09
“Optional Sinking Fund Payment”	3.09
“Paying Agent”	2.05
“Payment Default”	10.02
“Registrar”	2.05
“Required Currency”	6.10
“Successor”	5.01

SECTION 1.03 *Incorporation by Reference of Trust Indenture Act.*

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture (and if the Indenture is not qualified under the TIA at that time, as if it were so qualified unless otherwise provided). The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“Indenture Securities” means the Securities.

“Indenture Security Holder” means a Holder.

“Indenture to be Qualified” means this Indenture.

“Indenture Trustee” or “Institutional Trustee” means the Trustee.

“Obligor” on the indenture securities means the Company or any other obligor on the Securities.

All terms used in this Indenture that are defined by the TIA, defined by a TIA reference to another statute or defined by an SEC rule under the TIA have the meanings so assigned to them.

SECTION 1.04 *Rules of Construction.*

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) provisions apply to successive events and transactions; and
- (6) all references in this instrument to Articles and Sections are references to the corresponding Articles and Sections in and of this instrument.

**ARTICLE II  
THE SECURITIES**

SECTION 2.01 *Amount Unlimited; Issuable in Series.*

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth, or determined in the manner provided, in an Officers' Certificate of the Company or in a Company Order, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

- (1) the title of the Securities of the series (which shall distinguish the Securities of the series from the Securities of all other series);
- (2) if there is to be a limit, the limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 2.08, 2.09, 2.12, 2.17, 3.07 or 9.05 and except for any Securities which, pursuant to Section 2.04 or 2.17, are deemed never to have been authenticated and delivered hereunder); *provided, however*, that unless otherwise provided in the terms of the series, the authorized aggregate principal amount of such series may be increased before or after the issuance of any Securities of the series by a Board Resolution (or action pursuant to a Board Resolution) to such effect;
- (3) whether any Securities of the series are to be issuable initially in temporary global form and whether any Securities of the series are to be issuable in permanent global form, as Global Securities or otherwise, and, if so, whether beneficial owners of interests in any such Global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.17, and the initial Depositary and Security Custodian, if any, for any Global Security or Securities of such series;
- (4) the manner in which any interest payable on a temporary Global Security on any Interest Payment Date will be paid if other than in the manner provided in Section 2.14;
- (5) the date or dates on which the principal of and premium (if any) on the Securities of the series is payable or the method of determination thereof;
- (6) the rate or rates, or the method of determination thereof, at which the Securities of the series shall bear interest, if any, whether and under what circumstances Additional Amounts with respect to

such Securities shall be payable, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the record date for the interest payable on any Securities on any Interest Payment Date, or if other than provided herein, the Person to whom any interest on Securities of the series shall be payable;

(7) the place or places where, subject to the provisions of Section 4.02, the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series shall be payable;

(8) the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, if the Company is to have that option, and the manner in which the Company must exercise any such option, if different from those set forth herein;

(9) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid in whole or in part pursuant to such obligation;

(10) if other than denominations of \$1,000 and any integral multiple thereof, the denomination in which any Securities of that series shall be issuable;

(11) if other than Dollars, the currency or currencies (including composite currencies) or the form, including equity securities, other debt securities (including Securities), warrants or any other securities or property of the Company or any other Person, in which payment of the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series shall be payable;

(12) if the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a currency or currencies (including composite currencies) other than that in which the Securities are stated to be payable, the currency or currencies (including composite currencies) in which payment of the principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;

(13) if the amount of payments of principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series may be determined with reference to any commodities, currencies or indices, values, rates or prices or any other index or formula, the manner in which such amounts shall be determined;

(14) if other than the entire principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.02;

(15) any additional means of satisfaction and discharge of this Indenture and any additional conditions or limitations to discharge with respect to Securities of the series pursuant to Article VIII or any modifications of or deletions from such conditions or limitations;

(16) any deletions or modifications of or additions to the Events of Default set forth in Section 6.01 or covenants of the Company set forth in Article IV pertaining to the Securities of the series;

(17) any restrictions or other provisions with respect to the transfer or exchange of Securities of the series, which may amend, supplement, modify or supersede those contained in this Article II;

(18) if the Securities of the series are to be convertible into or exchangeable for capital stock, other debt securities (including Securities), warrants, other equity securities or any other securities or property of the Company or any other Person, at the option of the Company or the Holder or upon the occurrence of any condition or event, the terms and conditions for such conversion or exchange;

(19) if the Securities of the series are to be entitled to the benefit of Section 4.03(b) (and accordingly constitute Rule 144A Securities), that fact;

(20) any modifications to the definition of "Senior Debt," to Article X or to any other provisions regarding subordination with respect to the Securities of the series; and

(21) any other terms of the series (which terms shall not be prohibited by the provisions of this Indenture).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 2.03) set forth, or determined in the manner provided, in the Officers' Certificate or Company Order referred to above or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action, together with such Board Resolution, shall be set forth in an Officers' Certificate or certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate or Company Order setting forth the terms of the series.

The Securities shall be subordinated in right of payment to Senior Debt as provided in Article X and/or as specified as contemplated pursuant to this Section 2.01.

#### SECTION 2.02 *Denominations.*

The Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 2.01. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series denominated in Dollars shall be issuable in denominations of \$1,000 and any integral multiples thereof.

#### SECTION 2.03 *Forms Generally.*

The Securities of each series shall be in fully registered form and in substantially such form or forms (including temporary or permanent global form) established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto. The Securities may have notations, legends or endorsements required by law, securities exchange rule, the Company's certificate of incorporation, bylaws or other similar governing documents, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). A copy of the Board Resolution establishing the form or forms of Securities of any series shall be delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 2.04 for the authentication and delivery of such Securities.

The definitive Securities of each series shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the Officers executing such Securities, as evidenced by their execution thereof.

The Trustee's certificate of authentication shall be in substantially the following form:

"This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

\_\_\_\_\_, *as Trustee*  
By: \_\_\_\_\_  
*Authorized Signatory*".



SECTION 2.04 *Execution, Authentication, Delivery and Dating.*

Two Officers of the Company shall sign the Securities on behalf of the Company by manual or facsimile signature. If an Officer of the Company whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall be valid nevertheless.

A Security shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of an authorized signatory of the Trustee, which signature shall be conclusive evidence that the Security has been authenticated under this Indenture. Notwithstanding the foregoing, if any Security has been authenticated and delivered hereunder but never issued and sold by the Company, and the Company delivers such Security to the Trustee for cancellation as provided in Section 2.13, together with a written statement (which need not comply with Section 12.05 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, and the Trustee shall authenticate and deliver such Securities for original issue upon a Company Order for the authentication and delivery of such Securities or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by Company Order. Such order shall specify the amount of the Securities to be authenticated, the date on which the original issue of Securities is to be authenticated, the name or names of the initial Holder or Holders and any other terms of the Securities of such series not otherwise determined. If provided for in such procedures, such Company Order may authorize (1) authentication and delivery of Securities of such series for original issue from time to time, with certain terms (including, without limitation, the Maturity date or dates, original issue date or dates and interest rate or rates) that differ from Security to Security and (2) authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent, which instructions shall be promptly confirmed in writing.

If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Section 2.01, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive (in addition to the Company Order referred to above and the other documents required by Section 12.04), and (subject to Section 7.01) shall be fully protected in relying upon:

- (a) an Officers' Certificate setting forth the Board Resolution and, if applicable, an appropriate record of any action taken pursuant thereto, as contemplated by the last paragraph of Section 2.01; and
- (b) an Opinion of Counsel to the effect that:
  - (i) the form of such Securities has been established in conformity with the provisions of this Indenture;
  - (ii) the terms of such Securities have been established in conformity with the provisions of this Indenture; and
  - (iii) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other

similar laws in effect from time to time affecting the rights of creditors generally, and the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

If all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Officers' Certificate and Opinion of Counsel at the time of issuance of each such Security, but such Officers' Certificate and Opinion of Counsel shall be delivered at or before the time of issuance of the first Security of the series to be issued.

The Trustee shall not be required to authenticate such Securities if the issuance of such Securities pursuant to this Indenture would affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner not reasonably acceptable to the Trustee.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

Each Security shall be dated the date of its authentication.

#### SECTION 2.05 *Registrar and Paying Agent.*

The Company shall maintain an office or agency for each series of Securities where Securities of such series may be presented for registration of transfer or exchange ("Registrar") and an office or agency where Securities of such series may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Securities of such series and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. The Company may change any Paying Agent or Registrar without notice to any Holder. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any Subsidiary may act as Paying Agent or Registrar.

The Company initially appoints the Trustee as Registrar and Paying Agent.

#### SECTION 2.06 *Paying Agent to Hold Money in Trust.*

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, or interest on or any Additional Amounts with respect to Securities and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. Upon payment over to the Trustee and upon accounting for any funds disbursed, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Each Paying Agent shall otherwise comply with TIA § 317(b).

#### SECTION 2.07 *Holder Lists.*

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar with respect to a series of Securities, the Company shall furnish to the Trustee at least five Business Days before each interest payment date (the "Interest Payment Date") with respect to such series of Securities, and at such other

times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders of such series, and the Company shall otherwise comply with TIA § 312(a).

*SECTION 2.08 Transfer and Exchange.*

Except as set forth in Section 2.17 or as may be provided pursuant to Section 2.01:

When Securities of any series are presented to the Registrar with the request to register the transfer of such Securities or to exchange such Securities for an equal principal amount of Securities of the same series of like tenor and of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements and the requirements of this Indenture for such transactions are met; *provided, however*, that the Securities presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instruction of transfer in form reasonably satisfactory to the Registrar duly executed by the Holder thereof or by his attorney, duly authorized in writing, on which instruction the Registrar can rely.

To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's written request and submission of the Securities or Global Securities. No service charge shall be made to a Holder for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than such transfer tax or similar governmental charge payable upon exchanges pursuant to Section 2.12, 3.07 or 9.05). The Trustee shall authenticate Securities in accordance with the provisions of Section 2.04. Notwithstanding any other provisions of this Indenture to the contrary, the Company shall not be required to register the transfer or exchange of (a) any Security selected for redemption in whole or in part pursuant to Article III, except the unredeemed portion of any Security being redeemed in part, or (b) any Security during the period beginning 15 Business Days prior to the mailing of notice of any offer to repurchase Securities of the series required pursuant to the terms thereof or of redemption of Securities of a series to be redeemed and ending at the close of business on the day of mailing.

*SECTION 2.09 Replacement Securities.*

If any mutilated Security is surrendered to the Trustee, or if the Holder of a Security claims that the Security has been destroyed, lost or stolen and the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of such Security, the Company shall issue and the Trustee shall authenticate a replacement Security of the same series if the Trustee's requirements are met. If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security. If required by the Trustee or the Company, such Holder must furnish an indemnity bond that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent or any authenticating agent from any loss that any of them may suffer if a Security is replaced. The Company and the Trustee may charge a Holder for their expenses in replacing a Security.

Every replacement Security is an additional obligation of the Company.

*SECTION 2.10 Outstanding Securities.*

The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those defeased pursuant to Section 8.01(c), those reductions in the interest in a Global Security effected by the Trustee hereunder and those described in this Section 2.10 as not outstanding.

If a Security is replaced pursuant to Section 2.09, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

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

A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

*SECTION 2.11 Original Issue Discount, Foreign-Currency Denominated and Treasury Securities.*

In determining whether the Holders of the required principal amount of Securities have concurred in any direction, amendment, supplement, waiver or consent, (a) the principal amount of an Original Issue Discount Security shall be the principal amount thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof pursuant to Section 6.02, (b) the principal amount of a Security denominated in a foreign currency shall be the Dollar equivalent, as determined by the Company by reference to the noon buying rate in The City of New York for cable transfers for such currency, as such rate is certified for customs purposes by the Federal Reserve Bank of New York (the "Exchange Rate") on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent, as determined by the Company by reference to the Exchange Rate on the date of original issuance of such Security, of the amount determined as provided in (a) above), of such Security and (c) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded, except that, for the purpose of determining whether the Trustee shall be protected in relying upon any such direction, amendment, supplement, waiver or consent, only Securities that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded.

*SECTION 2.12 Temporary Securities.*

Until definitive Securities of any series are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities, but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

*SECTION 2.13 Cancellation.*

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, payment or redemption or for credit against any sinking fund payment. The Trustee shall cancel all Securities surrendered for registration of transfer, exchange, payment, redemption, replacement or cancellation or for credit against any sinking fund. Unless the Company shall direct in writing that canceled Securities be returned to it, after written notice to the Company all canceled Securities held by the Trustee shall be disposed of in accordance with the usual disposal procedures of the Trustee, and the Trustee shall maintain a record of their disposal. The Company may not issue new Securities to replace Securities that have been paid or that have been delivered to the Trustee for cancellation or for credit against any sinking fund payment.

*SECTION 2.14 Payments; Defaulted Interest.*

Unless otherwise provided as contemplated by Section 2.01, interest (except defaulted interest) on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Persons who are registered Holders of that Security at the close of business on the record date next preceding such Interest Payment Date, even if such Securities are canceled after such record date and on or before such Interest Payment Date. The Holder must surrender a Security to a Paying Agent to collect principal payments. Unless otherwise provided with respect to the Securities of any series, the Company will pay the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities in Dollars. Such amounts shall be payable at the offices of the Trustee or any Paying Agent, *provided* that at the option of the Company, the Company may pay such amounts (1) by wire transfer with respect to Global Securities or (2) by check payable in such money mailed to a Holder's registered address with respect to any Securities.

If the Company defaults in a payment of interest on the Securities of any series, the Company shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest on the defaulted interest, in each case at the rate provided in the Securities of such series and in Section 4.01. The Company may pay the defaulted interest to

the Persons who are Holders on a subsequent special record date. At least 15 days before any special record date selected by the Company, the Company (or the Trustee, in the name of and at the expense of the Company upon 20 days' prior written notice from the Company setting forth such special record date and the interest amount to be paid) shall mail to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

*SECTION 2.15 Persons Deemed Owners.*

The Company, the Trustee, any Agent and any authenticating agent may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payments of principal of, premium (if any) or interest on or any Additional Amounts with respect to such Security and for all other purposes. None of the Company, the Trustee, any Agent or any authenticating agent shall be affected by any notice to the contrary.

*SECTION 2.16 Computation of Interest.*

Except as otherwise specified as contemplated by Section 2.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a year comprising twelve 30-day months.

*SECTION 2.17 Global Securities; Book-Entry Provisions.*

If Securities of a series are issuable in global form as a Global Security, as contemplated by Section 2.01, then, notwithstanding clause (10) of Section 2.01 and the provisions of Section 2.02, any such Global Security shall represent such of the outstanding Securities of such series as shall be specified therein and may provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, transfers or redemptions. Any endorsement of a Global Security to reflect the amount, or any increase or decrease in the amount, of outstanding Securities represented thereby shall be made by the Trustee (i) in such manner and upon instructions given by such Person or Persons as shall be specified in such Security or in a Company Order to be delivered to the Trustee pursuant to Section 2.04 or (ii) otherwise in accordance with written instructions or such other written form of instructions as is customary for the Depository for such Security, from such Depository or its nominee on behalf of any Person having a beneficial interest in such Global Security. Subject to the provisions of Section 2.04 and, if applicable, Section 2.12, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified in such Security or in the applicable Company Order. With respect to the Securities of any series that are represented by a Global Security, the Company authorizes the execution and delivery by the Trustee of a letter of representations or other similar agreement or instrument in the form customarily provided for by the Depository appointed with respect to such Global Security. Any Global Security may be deposited with the Depository or its nominee, or may remain in the custody of the Trustee or the Security Custodian therefor pursuant to a FAST Balance Certificate Agreement or similar agreement between the Trustee and the Depository. If a Company Order has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not comply with Section 12.05 and need not be accompanied by an Opinion of Counsel.

Members of, or participants in, the Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee or the Security Custodian as its custodian, or under such Global Security, and the Depository may be treated by the Company, the Trustee or the Security Custodian and any agent of the Company, the Trustee or the Security Custodian as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, (i) the registered holder of a Global Security of a series may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder of Securities of such series is entitled to take under this Indenture or the Securities of such series and (ii) nothing herein shall prevent the Company, the Trustee or the Security Custodian, or any agent of the Company, the Trustee or the Security Custodian, from giving effect to any written certification, proxy or other authorization furnished by the Depository or shall impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a beneficial owner of any Security.

Notwithstanding Section 2.08, and except as otherwise provided pursuant to Section 2.01, transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in a Global Security may be transferred in accordance with the rules and procedures of the Depository. Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security if, and only if, either (1) the Depository notifies the Company that it is unwilling or unable to continue as Depository for the Global Security and a successor Depository is not appointed by the Company within 90 days of such notice, (2) an Event of Default has occurred with respect to such series and is continuing and the Registrar has received a request from the Depository to issue Securities in lieu of all or a portion of the Global Security (in which case the Company shall deliver Securities within 30 days of such request) or (3) the Company determines not to have the Securities represented by a Global Security.

In connection with any transfer of a portion of the beneficial interests in a Global Security to beneficial owners pursuant to this Section 2.17, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Global Security in an amount equal to the principal amount of the beneficial interests in the Global Security to be transferred, and the Company shall execute, and the Trustee upon receipt of a Company Order for the authentication and delivery of Securities shall authenticate and deliver, one or more Securities of the same series of like tenor and amount.

In connection with the transfer of all the beneficial interests in a Global Security to beneficial owners pursuant to this Section 2.17, the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interests in the Global Security, an equal aggregate principal amount of Securities of authorized denominations.

Neither the Company nor the Trustee will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Securities by the Depository, or for maintaining, supervising or reviewing any records of the Depository relating to such Securities. Neither the Company nor the Trustee shall be liable for any delay by the related Global Security Holder or the Depository in identifying the beneficial owners, and each such Person may conclusively rely on, and shall be protected in relying on, instructions from such Global Security Holder or the Depository for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of the Securities to be issued).

The provisions of the last sentence of the third paragraph of Section 2.04 shall apply to any Global Security if such Global Security was never issued and sold by the Company and the Company delivers to the Trustee the Global Security together with written instructions (which need not comply with Section 12.05 and need not be accompanied by an Opinion of Counsel) with regard to the cancellation or reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of the third paragraph of Section 2.04.

Notwithstanding the provisions of Sections 2.03 and 2.15, unless otherwise specified as contemplated by Section 2.01, payment of principal of, premium (if any) and interest on and any Additional Amounts with respect to any Global Security shall be made to the Person or Persons specified therein.

### **ARTICLE III REDEMPTION**

#### *SECTION 3.01 Applicability of Article.*

Securities of any series that are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 2.01 for Securities of any series) in accordance with this Article III.

#### *SECTION 3.02 Notice to the Trustee.*

If the Company elects to redeem Securities of any series pursuant to this Indenture, it shall notify the Trustee of the Redemption Date and the principal amount of Securities of such series to be redeemed. The Company shall so notify the Trustee at least 45 days before the Redemption Date (unless a shorter notice shall be satisfactory to

the Trustee) by delivering to the Trustee an Officers' Certificate stating that such redemption will comply with the provisions of this Indenture and of the Securities of such series. Any such notice may be canceled at any time prior to the mailing of such notice of such redemption to any Holder and shall thereupon be void and of no effect.

*SECTION 3.03 Selection of Securities To Be Redeemed.*

If less than all the Securities of any series are to be redeemed (unless all of the Securities of such series of a specified tenor are to be redeemed), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the outstanding Securities of such series (and tenor) not previously called for redemption, either pro rata, by lot or by such other method as the Trustee shall deem fair and appropriate and that may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series or of the principal amount of Global Securities of such series.

The Trustee shall promptly notify the Company and the Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Securities shall relate, in the case of any of the Securities redeemed or to be redeemed only in part, to the portion of the principal amount thereof which has been or is to be redeemed.

*SECTION 3.04 Notice of Redemption.*

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at the address of such Holder appearing in the register of Securities maintained by the Registrar.

All notices of redemption shall identify the Securities to be redeemed and shall state:

(1) the Redemption Date;

(2) the Redemption Price;

(3) that, unless the Company defaults in making the redemption payment, interest on Securities called for redemption ceases to accrue on and after the Redemption Date, and the only remaining right of the Holders of such Securities is to receive payment of the Redemption Price upon surrender to the Paying Agent of the Securities redeemed;

(4) if any Security is to be redeemed in part, the portion of the principal amount thereof to be redeemed and that on and after the Redemption Date, upon surrender for cancellation of such Security to the Paying Agent, a new Security or Securities in the aggregate principal amount equal to the unredeemed portion thereof will be issued without charge to the Holder;

(5) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price and the name and address of the Paying Agent;

(6) that the redemption is for a sinking or analogous fund, if such is the case; and

(7) the CUSIP number, if any, relating to such Securities.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name and at the expense of the Company.

*SECTION 3.05 Effect of Notice of Redemption.*

Once notice of redemption is mailed, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price. Upon surrender to the Paying Agent, such Securities called for redemption shall be paid at the Redemption Price, but interest installments whose maturity is on or prior to such Redemption Date will be payable on the relevant Interest Payment Dates to the Holders of record at the close of business on the relevant record dates specified pursuant to Section 2.01.

*SECTION 3.06 Deposit of Redemption Price.*

On or prior to 11:00 a.m., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or the Paying Agent (or, if the Company is acting as the Paying Agent, segregate and hold in trust as provided in Section 2.06) an amount of money in same day funds sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on and any Additional Amounts with respect to, the Securities or portions thereof which are to be redeemed on that date, other than Securities or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

If the Company complies with the preceding paragraph, then, unless the Company defaults in the payment of such Redemption Price, interest on the Securities to be redeemed will cease to accrue on and after the applicable Redemption Date, whether or not such Securities are presented for payment, and the Holders of such Securities shall have no further rights with respect to such Securities except for the right to receive the Redemption Price upon surrender of such Securities. If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal, premium, if any, any Additional Amounts, and, to the extent lawful, accrued interest thereon shall, until paid, bear interest from the Redemption Date at the rate specified pursuant to Section 2.01 or provided in the Securities or, in the case of Original Issue Discount Securities, such Securities' yield to maturity.

*SECTION 3.07 Securities Redeemed or Purchased in Part.*

Upon surrender to the Paying Agent of a Security to be redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge a new Security or Securities, of the same series and of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the unredeemed portion of the principal of the Security so surrendered that is not redeemed.

*SECTION 3.08 Purchase of Securities.*

Unless otherwise specified as contemplated by Section 2.01, the Company and any Affiliate of the Company may, subject to applicable law, at any time purchase or otherwise acquire Securities in the open market or by private agreement. Any such acquisition shall not operate as or be deemed for any purpose to be a redemption of the indebtedness represented by such Securities. Any Securities purchased or acquired by the Company may be delivered to the Trustee and, upon such delivery, the indebtedness represented thereby shall be deemed to be satisfied. Section 2.13 shall apply to all Securities so delivered.

*SECTION 3.09 Mandatory and Optional Sinking Funds.*

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment." Unless otherwise provided by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.10. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series and by this Article III.

*SECTION 3.10 Satisfaction of Sinking Fund Payments with Securities.*

The Company may deliver outstanding Securities of a series (other than any previously called for redemption) and may apply as a credit Securities of a series that have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment



with respect to the Securities of such series required to be made pursuant to the terms of such series of Securities; *provided* that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

#### SECTION 3.11 *Redemption of Securities for Sinking Fund.*

Not less than 45 days prior (unless a shorter period shall be satisfactory to the Trustee) to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate of the Company specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivery of or by crediting Securities of that series pursuant to Section 3.10 and will also deliver or cause to be delivered to the Trustee any Securities to be so delivered. Failure of the Company to timely deliver or cause to be delivered such Officers' Certificate and Securities specified in this paragraph, if any, shall not constitute a default but shall constitute the election of the Company (i) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof and (ii) that the Company will make no optional sinking fund payment with respect to such series as provided in this Section.

If the sinking fund payment or payments (mandatory or optional or both) to be made in cash on the next succeeding sinking fund payment date plus any unused balance of any preceding sinking fund payments made in cash shall exceed \$100,000 (or the Dollar equivalent thereof based on the applicable Exchange Rate on the date of original issue of the applicable Securities) or a lesser sum if the Company shall so request with respect to the Securities of any particular series, such cash shall be applied on the next succeeding sinking fund payment date to the redemption of Securities of such series at the sinking fund redemption price together with accrued interest to the date fixed for redemption. If such amount shall be \$100,000 (or the Dollar equivalent thereof as aforesaid) or less and the Company makes no such request then it shall be carried over until a sum in excess of \$100,000 (or the Dollar equivalent thereof as aforesaid) is available. Not less than 30 days before each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.03 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.04. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.05, 3.06 and 3.07.

### ARTICLE IV COVENANTS

#### SECTION 4.01 *Payment of Securities.*

The Company shall pay the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of each series on the dates and in the manner provided in the Securities of such series, in this Indenture, and in any supplemental indenture hereto. Principal, premium, interest and any Additional Amounts shall be considered paid on the date due if the Paying Agent (other than the Company or a Subsidiary) holds on that date money deposited by the Company designated for and sufficient to pay all principal, premium, interest and any Additional Amounts then due.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium (if any), at a rate equal to the then applicable interest rate on the Securities to the extent lawful; and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and any Additional Amount (without regard to any applicable grace period) at the same rate to the extent lawful.

#### SECTION 4.02 *Maintenance of Office or Agency.*

The Company will maintain in each Place of Payment for any series of Securities an office or agency (which may be an office of the Trustee, the Registrar or the Paying Agent) where Securities of that series may be presented for registration of transfer or exchange, where Securities of that series may be presented for payment and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be

served. Unless otherwise designated by the Company by written notice to the Trustee, such office or agency shall be the office of the Trustee in The City of \_\_\_\_\_, which on the date hereof is located at \_\_\_\_\_. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

#### SECTION 4.03 *SEC Reports; Financial Statements.*

(a) If the Company is subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file with the Trustee, within 15 days after it files the same with the SEC, copies of the annual reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. If this Indenture is qualified under the TIA, but not otherwise, the Company shall also comply with the provisions of TIA § 314(a). Delivery of such reports, information and documents to the Trustee shall be for informational purposes only, and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates or certificates delivered pursuant to Section 4.04).

(b) If the Company is not subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Company shall furnish to all Holders of Rule 144A Securities and prospective purchasers of Rule 144A Securities designated by the Holders of Rule 144A Securities, promptly upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) promulgated under the Securities Act of 1933, as amended.

#### SECTION 4.04 *Compliance Certificate.*

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, a statement signed by an Officer of the Company, which need not constitute an Officers' Certificate, complying with TIA § 314(a)(4) and stating that in the course of performance by the signing Officer of his duties as such Officer of the Company he would normally obtain knowledge of the keeping, observing, performing and fulfilling by the Company of its obligations under this Indenture, and further stating that to the best of his knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which such Officer may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) The Company shall, so long as Securities of any series are outstanding, deliver to the Trustee, forthwith upon any Officer of the Company becoming aware of any Default or Event of Default under this Indenture, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

#### SECTION 4.05 *Corporate Existence.*

Subject to Article V, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

SECTION 4.06 *Waiver of Stay, Extension or Usury Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive it from paying all or any portion of the principal of or interest on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 4.07 *Additional Amounts.*

If the Securities of a series expressly provide for the payment of Additional Amounts, the Company will pay to the Holder of any Security of such series Additional Amounts as expressly provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or the net proceeds received from the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided for in this Section 4.07 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to the provisions of this Section 4.07 and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

**ARTICLE V  
SUCCESSORS**

SECTION 5.01 *Limitations on Mergers and Consolidations.*

The Company shall not, in any transaction or series of transactions, consolidate with or merge into any Person, or sell, lease, convey, transfer or otherwise dispose of all or substantially all of its assets to any Person, unless:

(1) either (a) the Company shall be the continuing Person or (b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged, or to which such sale, lease, conveyance, transfer or other disposition shall be made (collectively, the "Successor"), is organized and validly existing under the laws of the United States, any political subdivision thereof or any State thereof or the District of Columbia, and expressly assumes by supplemental indenture the due and punctual payment of the principal of, premium (if any) and interest on and any Additional Amounts with respect to all the Securities and the performance of the Company's covenants and obligations under this Indenture and the Securities;

(2) immediately after giving effect to such transaction or series of transactions, no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(3) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that the transaction and such supplemental indenture comply with this Indenture.

SECTION 5.02 *Successor Person Substituted.*

Upon any consolidation or merger of the Company or any sale, lease, conveyance, transfer or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01, the Successor formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance, transfer or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture and the Securities with the same effect as if such Successor had been named as the Company herein and the predecessor Company, in the case of a sale, conveyance, transfer or other disposition, shall be released from all obligations under this Indenture and the Securities.

**ARTICLE VI  
DEFAULTS AND REMEDIES**

**SECTION 6.01 *Events of Default.***

Unless either inapplicable to a particular series or specifically deleted or modified in or pursuant to the supplemental indenture or Board Resolution establishing such series of Securities or in the form of Security for such series, an “Event of Default,” wherever used herein with respect to Securities of any series, occurs if:

- (1) the Company defaults in the payment of interest on or any Additional Amounts with respect to any Security of that series when the same becomes due and payable and such default continues for a period of 30 days;
- (2) the Company defaults in the payment of (A) the principal of any Security of that series at its Maturity or (B) premium (if any) on any Security of that series when the same becomes due and payable;
- (3) the Company defaults in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series, and such default continues for a period of 30 days;
- (4) the Company fails to comply with any of its other covenants or agreements in, or provisions of, the Securities of such series or this Indenture (other than an agreement, covenant or provision that has expressly been included in this Indenture solely for the benefit of one or more series of Securities other than that series) which shall not have been remedied within the specified period after written notice, as specified in the last paragraph of this Section 6.01;
- (5) the Company pursuant to or within the meaning of any Bankruptcy Law:
  - (A) commences a voluntary case,
  - (B) consents to the entry of an order for relief against it in an involuntary case,
  - (C) consents to the appointment of a Bankruptcy Custodian of it or for all or substantially all of its property, or
  - (D) makes a general assignment for the benefit of its creditors;
- (6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that remains unstayed and in effect for 90 consecutive days and that:
  - (A) is for relief against the Company as debtor in an involuntary case,
  - (B) appoints a Bankruptcy Custodian of the Company or a Bankruptcy Custodian for all or substantially all of the property of the Company, or
  - (C) orders the liquidation of the Company; or
- (7) any other Event of Default provided with respect to Securities of that series occurs.

The term “Bankruptcy Custodian” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee shall not be deemed to know or have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture.

When a Default is cured, it ceases.

Notwithstanding the foregoing provisions of this Section 6.01, if the principal of, premium (if any) or interest on or Additional Amounts with respect to any Security is payable in a currency or currencies (including a composite currency) other than Dollars and such currency or currencies are not available to the Company for making payment thereof due to the imposition of exchange controls or other circumstances beyond the control of the Company, the Company will be entitled to satisfy its obligations to Holders of the Securities by making such payment in Dollars in an amount equal to the Dollar equivalent of the amount payable in such other currency, as determined by the Company by reference to the Exchange Rate on the date of such payment, or, if such rate is not then available, on the basis of the most recently available Exchange Rate. Notwithstanding the foregoing provisions of this Section 6.01, any payment made under such circumstances in Dollars where the required payment is in a currency other than Dollars will not constitute an Event of Default under this Indenture.

A Default under clause (4) or (7) of this Section 6.01 is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in principal amount of the then outstanding Securities of the series affected by such Default (or, in the case of a Default under clause (4) of this Section 6.01, if outstanding Securities of other series are affected by such Default, then at least 25% in principal amount of the then outstanding Securities so affected) notify the Company and the Trustee, of the Default, and the Company fails to cure the Default within 90 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default."

#### SECTION 6.02 *Acceleration.*

If an Event of Default with respect to any Securities of any series at the time outstanding (other than an Event of Default specified in clause (5) or (6) of Section 6.01) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in principal amount of the then outstanding Securities of the series affected by such Event of Default (or, in the case of an Event of Default described in clause (4) of Section 6.01, if outstanding Securities of other series are affected by such Event of Default, then at least 25% in principal amount of the then outstanding Securities so affected) by notice to the Company and the Trustee, may declare the principal of (or, if any such Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) and all accrued and unpaid interest on all then outstanding Securities of such series or of all series, as the case may be, to be due and payable. Upon any such declaration, the amounts due and payable on the Securities shall be due and payable immediately. If an Event of Default specified in clause (5) or (6) of Section 6.01 hereof occurs, such amounts shall *ipso facto* become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee or any Holder. The Holders of a majority in principal amount of the then outstanding Securities of the series affected by such Event of Default or all series, as the case may be, by written notice to the Trustee may rescind an acceleration and its consequences (other than nonpayment of principal of or premium or interest on or any Additional Amounts with respect to the Securities) if the rescission would not conflict with any judgment or decree and if all existing Events of Default with respect to Securities of that series (or of all series, as the case may be) have been cured or waived, except nonpayment of principal, premium, interest or any Additional Amounts that has become due solely because of the acceleration.

#### SECTION 6.03 *Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, or premium, if any, or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

#### SECTION 6.04 *Waiver of Defaults.*

Subject to Sections 6.07 and 9.02, the Holders of a majority in principal amount of the then outstanding Securities of any series or of all series (acting as one class) by notice to the Trustee may waive an existing or past Default or Event of Default with respect to such series or all series, as the case may be, and its consequences (including waivers obtained in connection with a tender offer or exchange offer for Securities of such series or all

series or a solicitation of consents in respect of Securities of such series or all series, provided that in each case such offer or solicitation is made to all Holders of then outstanding Securities of such series or all series (but the terms of such offer or solicitation may vary from series to series)), except (1) a continuing Default or Event of Default in the payment of the principal of, or premium, if any, or interest on or any Additional Amounts with respect to any Security or (2) a continued Default in respect of a provision that under Section 9.02 cannot be amended or supplemented without the consent of each Holder affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

*SECTION 6.05 Control by Majority.*

With respect to Securities of any series, the Holders of a majority in principal amount of the then outstanding Securities of such series may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it relating to or arising under an Event of Default described in clause (1), (2), (3) or (7) of Section 6.01, and with respect to all Securities, the Holders of a majority in principal amount of all the then outstanding Securities affected may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it not relating to or arising under such an Event of Default. However, the Trustee may refuse to follow any direction that conflicts with applicable law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders, or that may involve the Trustee in personal liability; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion from Holders directing the Trustee against all losses and expenses caused by taking or not taking such action.

*SECTION 6.06 Limitations on Suits.*

Subject to Section 6.07 hereof, a Holder of a Security of any series may pursue a remedy with respect to this Indenture or the Securities of such series only if:

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to such series;
- (2) the Holders of at least 25% in principal amount of the then outstanding Securities of such series make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) during such 60-day period the Holders of a majority in principal amount of the Securities of that series do not give the Trustee a direction inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

*SECTION 6.07 Rights of Holders to Receive Payment.*

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of principal of and premium, if any, and interest on and any Additional Amounts with respect to the Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

SECTION 6.08 *Collection Suit by Trustee.*

If an Event of Default specified in clause (1) or (2) of Section 6.01 hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the amount of principal, premium (if any), interest and any Additional Amounts remaining unpaid on the Securities of the series affected by the Event of Default, and interest on overdue principal and premium, if any, and, to the extent lawful, interest on overdue interest, and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents and to take such actions, including participating as a member, voting or otherwise, of any committee of creditors, as may be necessary or advisable to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company or its creditors or properties and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any Bankruptcy Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the Holders of the Securities may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10 *Priorities.*

If the Trustee collects any money pursuant to this Article VI, it shall, subject to Article X, pay out the money in the following order:

First: to the Trustee for amounts due under Section 7.07;

Second: to Holders for amounts due and unpaid on the Securities in respect of which or for the benefit of which such money has been collected, for principal, premium (if any), interest and any Additional Amounts ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium (if any), interest and any Additional Amounts, respectively; and

Third: to the Company.

The Trustee, upon prior written notice to the Company, may fix record dates and payment dates for any payment to Holders pursuant to this Article VI.

To the fullest extent allowed under applicable law, if for the purpose of obtaining a judgment against the Company in any court it is necessary to convert the sum due in respect of the principal of, premium (if any) or interest on or Additional Amounts with respect to the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the Business Day in The City of New York next preceding that on which final judgment is given. Neither the Company nor the Trustee shall be liable for any shortfall nor shall it benefit from any windfall in payments to Holders of Securities under this Section 6.10 caused by a change in

exchange rates between the time the amount of a judgment against it is calculated as above and the time the Trustee converts the Judgment Currency into the Required Currency to make payments under this Section 6.10 to Holders of Securities, but payment of such judgment shall discharge all amounts owed by the Company on the claim or claims underlying such judgment.

#### SECTION 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07, or a suit by a Holder or Holders of more than 10% in principal amount of the then outstanding Securities of any series.

### ARTICLE VII TRUSTEE

#### SECTION 7.01 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in such exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default with respect to the Securities of any series:

(1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine such certificates and opinions to determine whether, on their face, they appear to conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of Section 7.01(b);

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

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Section 7.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense.

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



except to the extent required by law. All money received by the Trustee shall, until applied as herein provided, be held in trust for the payment of the principal of, premium (if any) and interest on and Additional Amounts with respect to the Securities.

*SECTION 7.02 Rights of Trustee.*

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require instruction, an Officers' Certificate or an Opinion of Counsel or both to be provided. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such instruction, Officers' Certificate or Opinion of Counsel. The Trustee may consult at the Company's expense with counsel of its selection and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

*SECTION 7.03 May Hold Securities.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any of its Affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights and duties. However, the Trustee is subject to Sections 7.10 and 7.11.

*SECTION 7.04 Trustee's Disclaimer.*

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision hereof, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee and it shall not be responsible for any statement or recital herein or any statement in the Securities other than its certificate of authentication.

*SECTION 7.05 Notice of Defaults.*

If a Default or Event of Default with respect to the Securities of any series occurs and is continuing and it is known to the Trustee, the Trustee shall mail to Holders of Securities of such series a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium (if any) and interest on and Additional Amounts or any sinking fund installment with respect to the Securities of such series, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of Holders of Securities of such series.

*SECTION 7.06 Reports by Trustee to Holders.*

Within 60 days after \_\_\_\_\_ of each year after the execution of this Indenture, the Trustee shall mail to Holders of a series and the Company a brief report dated as of such reporting date that complies with TIA § 313(a); *provided, however*, that if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date with respect to a series, no report need be transmitted to Holders of such series. The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports if and as required by TIA §§ 313(c) and 313(d).

A copy of each report at the time of its mailing to Holders of a series of Securities shall be filed by the Company with the SEC and each securities exchange, if any, on which the Securities of such series are listed. The Company shall notify the Trustee if and when any series of Securities is listed on any securities exchange.

#### SECTION 7.07 *Compensation and Indemnity.*

The Company agrees to pay to the Trustee for its acceptance of this Indenture and services hereunder such compensation as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company agrees to reimburse the Trustee upon request for all reasonable disbursements, advances and expenses incurred by it. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company hereby indemnifies the Trustee and any predecessor Trustee against any and all loss, liability, damage, claim or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, except as set forth in the next following paragraph. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel; provided that the Company shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Company and the Trustee in connection with such defense. The Company need not pay for any settlement made without its consent.

The Company shall not be obligated to reimburse any expense or indemnify against any loss or liability incurred by the Trustee through the Trustee's negligence or bad faith.

To secure the payment obligations of the Company in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of any series. Such lien and the Company's obligations under this Section 7.07 shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in clauses (5) or (6) of Section 6.01 occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

#### SECTION 7.08 *Replacement of Trustee.*

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

The Trustee may resign and be discharged at any time with respect to the Securities of one or more series by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Securities of any series may remove the Trustee with respect to the Securities of such series by so notifying the Trustee and the Company. The Company may remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (3) a Bankruptcy Custodian or public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, with respect to the Securities of one or more series, the Company shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series). Within one year after the successor Trustee with

respect to the Securities of any series takes office, the Holders of a majority in principal amount of the Securities of such series then outstanding may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee with respect to the Securities of any series does not take office within 30 days after the retiring or removed Trustee resigns or is removed, the retiring or removed Trustee, the Company or the Holders of at least 10% in principal amount of the then outstanding Securities of such series may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

If the Trustee with respect to the Securities of a series fails to comply with Section 7.10, any Holder of Securities of such series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the Securities of such series.

In case of the appointment of a successor Trustee with respect to all Securities, each such successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the retiring Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

In case of the appointment of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more (but not all) series shall execute and deliver an indenture supplemental hereto in which each successor Trustee shall accept such appointment and that (1) shall confer to each successor Trustee all the rights, powers and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall confirm that all the rights, powers and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee. Nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, and each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee. Upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee shall have all the rights, powers and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates. On request of the Company or any successor Trustee, such retiring Trustee shall transfer to such successor Trustee all property held by such retiring Trustee as Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Notwithstanding replacement of the Trustee or Trustees pursuant to this Section 7.08, the obligations of the Company under Section 7.07 shall continue for the benefit of the retiring Trustee or Trustees.

So long as no Event of Default, or no event which is, or after notice or lapse of time, or both, would become, an Event of Default, shall have occurred and be continuing, and except with respect to a Trustee appointed by the act of the Holders of a majority in principal amount of then outstanding Securities of any series, if the Company shall have delivered to the Trustee (1) a Board Resolution appointing a successor Trustee, effective as of a date specified therein (which date shall be no sooner than 45 days after the date of such delivery, unless a shorter period shall be acceptable to the Trustee), and (2) an instrument of acceptance of such appointment, effective as of such date, by such successor Trustee, then the Trustee shall be deemed removed, the successor Trustee shall be deemed to have been appointed by the Company and such appointment shall be deemed to have been accepted as contemplated, all as of such date, and all other provisions of this Section 7.08 shall be applicable to such removal, appointment and acceptance except to the extent inconsistent with this paragraph.

#### SECTION 7.09 *Successor Trustee by Merger, etc.*

Subject to Section 7.10, if the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the

successor Trustee; *provided, however*, that in the case of a transfer of all or substantially all of its corporate trust business to another corporation, the transferee corporation expressly assumes all of the Trustee's liabilities hereunder.

In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

*SECTION 7.10 Eligibility; Disqualification.*

There shall at all times be a Trustee hereunder which shall be a corporation or banking or trust company or association organized and doing business under the laws of the United States, any State thereof or the District of Columbia and authorized under such laws to exercise corporate trust power, shall be subject to supervision or examination by Federal or State (or the District of Columbia) authority and shall have, or be a subsidiary of a bank or bank holding company having, a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition.

The Indenture shall always have a Trustee who satisfies the requirements of TIA §§ 310(a)(1), 310(a)(2) and 310(a)(5). The Trustee is subject to and shall comply with the provisions of TIA § 310(b) during the period of time required by this Indenture. Nothing in this Indenture shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA § 310(b).

*SECTION 7.11 Preferential Collection of Claims Against the Company.*

The Trustee is subject to and shall comply with the provisions of TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

**ARTICLE VIII  
DISCHARGE OF INDENTURE**

*SECTION 8.01 Termination of the Company's Obligations.*

(a) This Indenture shall cease to be of further effect with respect to the Securities of a series (except that the Company's obligations under Section 7.07, the Trustee's and Paying Agent's obligations under Section 8.03 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive), and the Trustee, on demand of the Company, shall execute proper instruments acknowledging the satisfaction and discharge of this Indenture with respect to the Securities of such series, when:

(1) either:

(A) all outstanding Securities of such series theretofore authenticated and issued (other than destroyed, lost or stolen Securities that have been replaced or paid) have been delivered to the Trustee for cancellation; or

(B) all outstanding Securities of such series not theretofore delivered to the Trustee for cancellation:

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and, in the case of clause (i), (ii) or (iii) above, the Company has irrevocably deposited or caused to be deposited with the Trustee as funds (immediately available to the Holders in the case of clause (i)) in trust for such purpose (x) cash in an amount, or (y) Government Obligations, maturing as to principal and interest at such times and in such amounts as will ensure the availability of cash in an amount or (z) a combination thereof, which will be sufficient, in the opinion (in the case of clauses (y) and (z)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on the Securities of such series for principal and interest to the date of such deposit (in the case of Securities which have become due and payable) or for principal, premium, if any, and interest to the Stated Maturity or Redemption Date, as the case may be; or

(C) the Company has properly fulfilled such other means of satisfaction and discharge as is specified, as contemplated by Section 2.01, to be applicable to the Securities of such series;

(2) the Company has paid or caused to be paid all other sums payable by it hereunder with respect to the Securities of such series; and

(3) the Company has delivered to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such series have been complied with, together with an Opinion of Counsel to the same effect.

(b) Unless this Section 8.01(b) is specified as not being applicable to Securities of a series as contemplated by Section 2.01, the Company may, at its option, terminate certain of its obligations under this Indenture ("Covenant Defeasance") with respect to the Securities of a series if:

(1) the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of Securities of such series, (i) money in the currency in which payment of the Securities of such series is to be made in an amount, or (ii) Government Obligations with respect to such series, maturing as to principal and interest at such times and in such amounts as will ensure the availability of money in the currency in which payment of the Securities of such series is to be made in an amount or (iii) a combination thereof, that is sufficient, in the opinion (in the case of clauses (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay the principal of and premium (if any) and interest on all Securities of such series on each date that such principal, premium (if any) or interest is due and payable and (at the Stated Maturity thereof or upon redemption as provided in Section 8.01(e)) to pay all other sums payable by it hereunder; *provided* that the Trustee shall have been irrevocably instructed to apply such money and/or the proceeds of such Government Obligations to the payment of said principal, premium (if any) and interest with respect to the Securities of such series as the same shall become due;

(2) the Company has delivered to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such series have been complied with, and an Opinion of Counsel to the same effect;

(3) no Default or Event of Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit;

(4) the Company shall have delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee or a tax ruling to the effect that the Holders will not recognize income, gain or loss for U.S. Federal income tax purposes as a result of the Company's exercise of its option under this Section 8.01(b) and will be subject to U.S. Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised;

(5) the Company has complied with any additional conditions specified pursuant to Section 2.01 to be applicable to the discharge of Securities of such series pursuant to this Section 8.01; and

(6) such deposit and discharge shall not cause the Trustee to have a conflicting interest as defined in TIA § 310(b).

In such event, this Indenture shall cease to be of further effect (except as set forth in this paragraph), and the Trustee, on demand of the Company, shall execute proper instruments acknowledging satisfaction and discharge under this Indenture. However, the Company's obligations in Sections 2.05, 2.06, 2.07, 2.08, 2.09, 4.01, 4.02, 7.07, 7.08 and 8.04, the Trustee's and Paying Agent's obligations in Section 8.03 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive until all Securities of such series are no longer outstanding. Thereafter, only the Company's obligations in Section 7.07 and the Trustee's and Paying Agent's obligations in Section 8.03 shall survive with respect to Securities of such series.

After such irrevocable deposit made pursuant to this Section 8.01(b) and satisfaction of the other conditions set forth herein, the Trustee upon request shall acknowledge in writing the discharge of the Company's obligations under this Indenture with respect to the Securities of such series except for those surviving obligations specified above.

In order to have money available on a payment date to pay principal of, premium (if any), or interest on or any Additional Amounts with respect to the Securities, the Government Obligations shall be payable as to such amounts on or before such payment date in such amounts as will provide the necessary money. Government Obligations shall not be callable at the issuer's option.

(c) If the Company has previously complied or is concurrently complying with Section 8.01(b) (other than any additional conditions specified pursuant to Section 2.01 that are expressly applicable only to covenant defeasance) with respect to Securities of a series, then, unless this Section 8.01(c) is specified as not being applicable to Securities of such series as contemplated by Section 2.01, the Company may elect that its obligations to make payments with respect to Securities of such series be discharged ("Legal Defeasance"), if:

(1) no Default or Event of Default under clauses (5) and (6) of Section 6.01 hereof shall have occurred at any time during the period ending on the 91st day after the date of deposit contemplated by Section 8.01(b) (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(2) unless otherwise specified with respect to Securities of such series as contemplated by Section 2.01, the Company has delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee to the effect referred to in Section 8.01(b)(4) with respect to such legal defeasance, which opinion is based on (i) a private ruling of the Internal Revenue Service addressed to the Company, (ii) a published ruling of the Internal Revenue Service pertaining to a comparable form of transaction or (iii) a change in the applicable federal income tax law (including regulations) after the date of this Indenture;

(3) the Company has complied with any other conditions specified pursuant to Section 2.01 to be applicable to the legal defeasance of Securities of such series pursuant to this Section 8.01(c); and

(4) the Company has delivered to the Trustee a Company Request requesting such legal defeasance of the Securities of such series and an Officers' Certificate stating that all conditions precedent with respect to such legal defeasance of the Securities of such series have been complied with, together with an Opinion of Counsel to the same effect.

In such event, the Company will be discharged from its obligations under this Indenture and the Securities of such series to pay principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of such series, the Company's obligations under Sections 4.01 and 4.02 shall terminate with respect to such Securities, and the entire indebtedness of the Company evidenced by such Securities shall be deemed paid and discharged.

(d) If and to the extent additional or alternative means of satisfaction, discharge or defeasance of Securities of a series are specified to be applicable to such series as contemplated by Section 2.01, the Company may terminate any or all of its obligations under this Indenture with respect to Securities of a series and any or all of its obligations under the Securities of such series if it fulfills such other means of satisfaction and discharge as may be so specified, as contemplated by Section 2.01, to be applicable to the Securities of such series.

(e) If Securities of any series subject to subsections (a), (b), (c) or (d) of this Section 8.01 are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory or optional sinking fund provisions, the terms of the applicable trust arrangement shall provide for such redemption, and the Company shall make such arrangements as are reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

*SECTION 8.02 Application of Trust Money.*

The Trustee or a trustee satisfactory to the Trustee and the Company shall hold in trust money or Government Obligations deposited with it pursuant to Section 8.01 hereof. It shall apply the deposited money and the money from Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series with respect to which the deposit was made. Money and securities held in trust are not subject to Article X.

*SECTION 8.03 Repayment to Company.*

The Trustee and the Paying Agent shall promptly pay to the Company any excess money or Government Obligations (or proceeds therefrom) held by them at any time upon the written request of the Company.

Subject to the requirements of any applicable abandoned property laws, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal, premium (if any), interest or any Additional Amounts that remain unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and the Paying Agent with respect to such money shall cease.

*SECTION 8.04 Reinstatement.*

If the Trustee or the Paying Agent is unable to apply any money or Government Obligations deposited with respect to Securities of any series in accordance with Section 8.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture with respect to the Securities of such series and under the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money or Government Obligations in accordance with Section 8.01; *provided, however*, that if the Company has made any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Obligations held by the Trustee or the Paying Agent.

**ARTICLE IX  
SUPPLEMENTAL INDENTURES AND AMENDMENTS**

*SECTION 9.01 Without Consent of Holders.*

The Company and the Trustee may amend or supplement this Indenture or the Securities or waive any provision hereof or thereof without the consent of any Holder:

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to comply with Section 5.01;

(3) to provide for uncertificated Securities in addition to or in place of certificated Securities, or to provide for the issuance of bearer Securities (with or without coupons);

(4) to provide any security for, or to add any guarantees of or additional obligors on, any series of Securities;

(5) to comply with any requirement in order to effect or maintain the qualification of this Indenture under the TIA;

(6) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series), or to surrender any right or power herein conferred upon the Company;

(7) to add any additional Events of Default with respect to all or any series of the Securities (and, if any Event of Default is applicable to less than all series of Securities, specifying the series to which such Event of Default is applicable);

(8) to change or eliminate any of the provisions of this Indenture; *provided* that any such change or elimination shall become effective only when there is no outstanding Security of any series created prior to the execution of such amendment or supplemental indenture that is adversely affected in any material respect by such change in or elimination of such provision;

(9) to establish the form or terms of Securities of any series as permitted by Section 2.01;

(10) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Section 8.01; *provided, however*, that any such action shall not adversely affect the interest of the Holders of Securities of such series or any other series of Securities in any material respect;

(11) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 7.08;

(12) to add circumstances under which the Company will pay additional interest on the Securities of the relevant series; or

(13) to conform the text of this Indenture or any Securities to the description thereof in any prospectus or prospectus supplement of the Company with respect to the offer and sale of Securities of any series, to the extent that such provision is inconsistent with a provision of this Indenture or the Securities.

Upon the request of the Company, accompanied by a Board Resolution, and upon receipt by the Trustee of the documents described in Section 9.06, the Trustee shall, subject to Section 9.06, join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and make any further appropriate agreements and stipulations that may be therein contained.

#### SECTION 9.02 *With Consent of Holders.*

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture with the written consent (including consents obtained in connection with a tender offer or exchange offer for Securities of any one or more series or all series or a solicitation of consents in respect of Securities of any one or more series or all series, *provided* that in each case such offer or solicitation is made to all Holders of then outstanding Securities of each such series (but the terms of such offer or solicitation may vary from series to series)) of the Holders of at least a majority in principal amount of the then outstanding Securities of all series affected by such amendment or supplement (acting as one class).



Upon the request of the Company, accompanied by a Board Resolution, and upon the filing with the Trustee of evidence of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Section 9.06, the Trustee shall, subject to Section 9.06, join with the Company in the execution of such amendment or supplemental indenture.

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

The Holders of a majority in principal amount of the then outstanding Securities of one or more series or of all series may waive compliance in a particular instance by the Company with any provision of this Indenture with respect to Securities of such series (including waivers obtained in connection with a tender offer or exchange offer for Securities of such series or a solicitation of consents in respect of Securities of such series, *provided* that in each case such offer or solicitation is made to all Holders of then outstanding Securities of such series (but the terms of such offer or solicitation may vary from series to series)).

However, without the consent of each Holder of each Outstanding Security affected, an amendment, supplement or waiver under this Section 9.02 may not:

- (1) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the rate of or change the time for payment of interest, including default interest, on any Security;
- (3) reduce the principal of, any premium on or any mandatory sinking fund payment with respect to, or change the Stated Maturity of, any Security or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.02;
- (4) reduce the premium, if any, payable upon the redemption of any Security or change the time at which any Security may or shall be redeemed;
- (5) change any obligation of the Company to pay Additional Amounts with respect to any Security;
- (6) change the coin or currency or currencies (including composite currencies) in which any Security or any premium, interest or Additional Amounts with respect thereto are payable;
- (7) impair the right to institute suit for the enforcement of any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Security pursuant to Sections 6.07 and 6.08, except as limited by Section 6.06;
- (8) make any change in the percentage of principal amount of Securities necessary to waive compliance with certain provisions of this Indenture pursuant to Section 6.04 or 6.07 or make any change in this sentence of Section 9.02;
- (9) modify the provisions of this Indenture with respect to the subordination of any Security in a manner adverse to the Holder thereof; or
- (10) waive a continuing Default or Event of Default in the payment of principal of, premium (if any) or interest on or Additional Amounts with respect to the Securities.

An amendment under this Section 9.02 may not make any change that adversely affects the rights under Article X of any holder of an issue of Senior Debt unless the holders of the issue pursuant to its terms consent to the change.

A supplemental indenture that changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

The right of any Holder to participate in any consent required or sought pursuant to any provision of this Indenture (and the obligation of the Company to obtain any such consent otherwise required from such Holder) may be subject to the requirement that such Holder shall have been the Holder of record of any Securities with respect to which such consent is required or sought as of a date identified by the Company in a notice furnished to Holders in accordance with the terms of this Indenture.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall mail to the Holders of each Security affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

#### *SECTION 9.03 Compliance with Trust Indenture Act.*

Every amendment or supplement to this Indenture or the Securities shall comply in form and substance with the TIA as then in effect.

#### *SECTION 9.04 Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his or her Security or portion of a Security if the Trustee receives written notice of revocation before a date and time therefor identified by the Company in a notice furnished to such Holder in accordance with the terms of this Indenture or, if no such date and time shall be identified, the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Company may, but shall not be obligated to, fix a record date (which need not comply with TIA § 316(c)) for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver or to take any other action under this Indenture. If a record date is fixed, then notwithstanding the provisions of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to consent to such amendment, supplement or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No consent shall be valid or effective for more than 90 days after such record date unless consents from Holders of the principal amount of Securities required hereunder for such amendment or waiver to be effective shall have also been given and not revoked within such 90-day period.

After an amendment, supplement or waiver becomes effective, it shall bind every Holder, unless it is of the type described in any of clauses (1) through (9) of Section 9.02 hereof. In such case, the amendment, supplement or waiver shall bind each Holder who has consented to it and every subsequent Holder that evidences the same debt as the consenting Holder's Security.

#### *SECTION 9.05 Notation on or Exchange of Securities.*

If an amendment or supplement changes the terms of an outstanding Security, the Company may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security at the request of the Company regarding the changed terms and return it to the Holder. Alternatively, if the Company so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment or supplement.

Securities of any series authenticated and delivered after the execution of any amendment or supplement may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such amendment or supplement.

*SECTION 9.06 Trustee to Sign Amendments, etc.*

The Trustee shall sign any amendment or supplement authorized pursuant to this Article if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment or supplement, the Trustee shall be entitled to receive, and, subject to Section 7.01 hereof, shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel provided at the expense of the Company as conclusive evidence that such amendment or supplement is authorized or permitted by this Indenture, that it is not inconsistent herewith, and that it will be valid and binding upon the Company in accordance with its terms.

**ARTICLE X  
SUBORDINATION OF SECURITIES**

*SECTION 10.01 Securities Subordinated to Senior Debt.*

The Company and each Holder of a Security of a series, by his acceptance thereof, agree that (a) the payment of the principal of, premium (if any) and interest on and any Additional Amounts with respect to each and all the Securities of such series and (b) any other payment in respect of the Securities of such series, including on account of the acquisition or redemption of Securities of such series by the Company, is subordinated, to the extent and in the manner provided in this Article X, to the prior payment in full of all Senior Debt of the Company, whether outstanding at the date of this Indenture or thereafter created, incurred, assumed or guaranteed, and that these subordination provisions are for the benefit of the holders of Senior Debt.

This Article X shall constitute a continuing offer to all Persons who, in reliance upon such provisions, become holders of, or continue to hold, Senior Debt, and such provisions are made for the benefit of the holders of Senior Debt, and such holders are made obligees hereunder and any one or more of them may enforce such provisions.

*SECTION 10.02 No Payment on Securities in Certain Circumstances.*

(a) Unless otherwise provided with respect to the Securities of a series as contemplated by Section 2.01, no payment shall be made by or on behalf of the Company on account of the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of any series or to acquire any Securities of such series (including any repurchases of Securities of such series pursuant to the provisions thereof at the option of the Holder thereof) for cash or property, or on account of any redemption provisions of Securities of such series, in the event of default in payment of any principal of, premium (if any) or interest on any Senior Debt of the Company when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by acceleration of maturity or otherwise (a "Payment Default"), unless and until such Payment Default has been cured or waived or otherwise has ceased to exist or such Senior Debt shall have been discharged or paid in full.

(b) In furtherance of the provisions of Section 10.01, in the event that, notwithstanding the foregoing provisions of this Section 10.02, any payment or distribution of assets of the Company shall be received by the Trustee, the Paying Agent or the Holders of Securities of any series at a time when such payment or distribution was prohibited by the provisions of this Section 10.02, then, unless such payment or distribution is no longer prohibited by this Section 10.02, such payment or distribution (subject to the provisions of Section 10.07) shall be received and held in trust by the Trustee, the Paying Agent or such Holder for the benefit of the holders of Senior Debt of the Company, and shall be paid or delivered by the Trustee, the Paying Agent or such Holders, as the case may be, to the holders of Senior Debt of the Company remaining unpaid or unprovided for or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Debt of the Company may have been issued, ratably, according to the aggregate amounts remaining unpaid on account of such Senior Debt of the Company held or represented by each, for application to the payment of all Senior Debt in full after giving effect to all concurrent payments and distributions to or for the holders of such Senior Debt.

SECTION 10.03 *Securities Subordinated to Prior Payment of All Senior Debt on Dissolution, Liquidation or Reorganization.*

Upon any distribution of assets of the Company or upon any dissolution, winding up, total or partial liquidation or reorganization of the Company, whether voluntary or involuntary, in bankruptcy, insolvency, receivership or similar proceeding or upon assignment for the benefit of creditors:

(1) the holders of all Senior Debt of the Company shall first be entitled to receive payments in full before the Holders of Securities of any series are entitled to receive any payment on account of the principal of, premium (if any) or interest on or any Additional Amounts with respect to Securities of such series;

(2) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of Securities of any series or the Trustee on behalf of such Holders would be entitled, except for the provisions of this Article X, shall be paid by the liquidating trustee or agent or other Person making such a payment or distribution directly to the holders of such Senior Debt or their representative, ratably according to the respective amounts of Senior Debt held or represented by each, to the extent necessary to make payment in full of all such Senior Debt remaining unpaid after giving effect to all concurrent payments and distributions to the holders of such Senior Debt; and

(3) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, shall be received by the Trustee or the Holders of Securities of any series or any Paying Agent (or, if the Company or any Subsidiary is acting as the Paying Agent, money for any such payment or distribution shall be segregated or held in trust) on account of the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of such series before all Senior Debt of the Company is paid in full, such payment or distribution (subject to the provisions of Section 10.07) shall be received and held in trust by the Trustee or such Holder or Paying Agent for the benefit of the holders of such Senior Debt, or their respective representatives, ratably according to the respective amounts of such Senior Debt held or represented by each, to the extent necessary to make payment as provided herein of all such Senior Debt remaining unpaid after giving effect to all concurrent payments and distributions and all provisions therefor to or for the holders of such Senior Debt, but only to the extent that as to any holder of such Senior Debt, as promptly as practical following notice from the Trustee to the holders of such Senior Debt that such prohibited payment has been received by the Trustee, Holder(s) or Paying Agent (or has been segregated as provided above), such holder (or a representative therefor) notifies the Trustee of the amounts then due and owing on such Senior Debt, if any, held by such holder and only the amounts specified in such notices to the Trustee shall be paid to the holders of such Senior Debt.

SECTION 10.04 *Subrogation to Rights of Holders of Senior Debt.*

Subject to the payment in full of all Senior Debt of the Company as provided herein, the Holders of the Securities of any series shall be subrogated (to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article X) to the rights of the holders of such Senior Debt to receive payments or distributions of assets of the Company applicable to the Senior Debt until all amounts owing on the Securities of such series shall be paid in full. For the purpose of such subrogation, no such payments or distributions to the holders of such Senior Debt by the Company, or by or on behalf of the Holders of the Securities of such series by virtue of this Article X, which otherwise would have been made to such Holders shall, as between the Company and such Holders, be deemed to be payment by the Company or on account of such Senior Debt, it being understood that the provisions of this Article X are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities of a series, on the one hand, and the holders of such Senior Debt, on the other hand.

If any payment or distribution to which the Holders of the Securities would otherwise have been entitled but for the provisions of this Article X shall have been applied, pursuant to the provisions of this Article X, to the payment of amounts payable under Senior Debt of the Company, then such Holders shall be entitled to receive from the holders of such Senior Debt any payments or distributions received by such holders of Senior Debt in excess of the amount sufficient to pay all amounts payable under or in respect of such Senior Debt in full.

SECTION 10.05 *Obligations of the Company Unconditional.*

Nothing contained in this Article X or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company and the Holders of the Securities of any series, the obligation of the Company, which is absolute and unconditional, to pay to such Holders the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of such series as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of such Holders and creditors of the Company other than the holders of the Senior Debt, nor shall anything herein or therein prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article X, of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Notwithstanding anything to the contrary in this Article X or elsewhere in this Indenture or in the Securities, upon any distribution of assets of the Company referred to in this Article X, the Trustee, subject to the provisions of Sections 7.01 and 7.02, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other Person making any distribution to the Trustee or to such Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Debt and other Debt of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article X so long as such court has been apprised of the provisions of, or the order, decree or certificate makes reference to, the provisions of this Article X.

SECTION 10.06 *Trustee Entitled to Assume Payments Not Prohibited in Absence of Notice.*

The Trustee shall not at any time be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee unless and until a Responsible Officer of the Trustee or any Paying Agent shall have received, no later than two Business Days prior to such payment, written notice thereof from the Company or from one or more holders of Senior Debt or from any representative thereof and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Sections 7.01 and 7.02, shall be entitled in all respects conclusively to assume that no such fact exists.

SECTION 10.07 *Application by Trustee of Amounts Deposited with It.*

Amounts deposited in trust with the Trustee pursuant to and in accordance with Article VIII shall be for the sole benefit of Holders of Securities of the series for the benefit of which such amounts were deposited, and, to the extent allocated for the payment of Securities of such series, shall not be subject to the subordination provisions of this Article X. Otherwise, any deposit of assets with the Trustee or the Paying Agent (whether or not in trust) for the payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Securities of any series shall be subject to the provisions of Sections 10.01, 10.02, 10.03 and 10.04; *provided* that if prior to two Business Days preceding the date on which by the terms of this Indenture any such assets may become distributable for any purpose (including, without limitation, the payment of either principal of, premium (if any) or interest on or any Additional Amounts with respect to any Security), a Responsible Officer of the Trustee or such Paying Agent shall not have received with respect to such assets the written notice provided for in Section 10.06, then the Trustee or such Paying Agent shall have full power and authority to receive such assets and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary that may be received by it on or after such date; and *provided further* that nothing contained in this Article X shall prevent the Company from making, or the Trustee from receiving or applying, any payment in connection with the redemption of Securities of a series if the first publication of notice of such redemption (whether by mail or otherwise in accordance with this Indenture) has been made, and the Trustee has received such payment from the Company, prior to the occurrence of any of the contingencies specified in Section 10.02 or 10.03.

*SECTION 10.08 Subordination Rights Not Impaired by Acts or Omissions of the Company or Holders of Senior Debt.*

No right of any present or future holders of any Senior Debt to enforce subordination provisions contained in this Article X shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with. The holders of Senior Debt may extend, renew, modify or amend the terms of the Senior Debt or any security therefor and release, sell or exchange such security and otherwise deal freely with the Company, all without affecting the liabilities and obligations of the parties to this Indenture or the Holders of the Securities of any series.

*SECTION 10.09 Trustee to Effectuate Subordination of Securities.*

Each Holder of a Security of any series by his acceptance thereof authorizes and expressly directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provisions contained in this Article X and to protect the rights of the Holders of the Securities of such series pursuant to this Indenture, and appoints the Trustee his attorney-in-fact for such purpose, including, in the event of any dissolution, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors of the Company), the filing of a claim for the unpaid balance of his Securities in the form required in said proceedings and cause said claim to be approved. If the Trustee does not file a proper claim or proof of debt in the form required in such proceeding prior to 30 days before the expiration of the time to file such claim or claims, then the holders of the Senior Debt or their representative is hereby authorized to have the right to file and is hereby authorized to file an appropriate claim for and on behalf of the Holders of Securities of such series. Nothing contained herein shall be deemed to authorize the Trustee or the holders of Senior Debt or their representative to authorize or consent to or accept or adopt on behalf of any Holder of Securities of any series any plan of reorganization, arrangement, adjustment or composition affecting the Securities of such series or the rights of any Holder thereof, or to authorize the Trustee or the holders of Senior Debt or their representative to vote in respect of the claim of any Holder of the Securities of such series in any such proceeding.

*SECTION 10.10 Right of Trustee to Hold Senior Debt.*

The Trustee in its individual capacity shall be entitled to all of the rights set forth in this Article X in respect of any Senior Debt at any time held by it to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

*SECTION 10.11 Article X Not to Prevent Events of Default.*

The failure to make a payment on account of principal or premium (if any) or interest on the Securities of any series by reason of any provision of this Article X shall not be construed as preventing the occurrence of a Default or an Event of Default under Section 6.01 with respect to Securities of such series or in any way prevent the Holders of the Securities of such series from exercising any right hereunder other than the right to receive payment on the Securities of such series.

*SECTION 10.12 No Fiduciary Duty of Trustee to Holders of Senior Debt.*

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt, and shall not be liable to any such holders (other than for its willful misconduct or negligence) if it shall in good faith mistakenly pay over or distribute to the Holders of the Securities of any series or the Company or any other Person, cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article X or otherwise. Nothing in this Section 10.12 shall affect the obligation of any other such Person to hold such payment for the benefit of, and to pay such payment over to, the holders of Senior Debt or their representative.

*SECTION 10.13 Article Applicable to Paying Agent.*

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article X shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article X in addition to or in place of the Trustee; *provided, however*, that this Section 10.13 shall not apply to the Company or any Subsidiary if the Company or such Subsidiary acts as Paying Agent.

**ARTICLE XI  
GUARANTEES**

Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed by such Guarantors as shall be established pursuant to Section 2.01 with respect to the Securities of such series. The Persons who shall initially be the Guarantors of the Securities of any such series may include any and all Persons as the Company may determine; provided that, prior to the authentication and delivery upon original issuance of Securities that are to be guaranteed by such Person or Persons, the Company, the Trustee and such Person or Persons shall enter into a supplemental indenture pursuant to Section 9.01 hereof whereby such Person or Persons shall become a Guarantor under this Indenture.

Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed in accordance with the terms of such Guarantees as established pursuant to Section 2.01 with respect to such Securities and such Guarantees thereof and (except as otherwise specified as contemplated by Section 2.01 for such Securities and such Guarantees thereof) in accordance with this Article.

Each Guarantor of any Security hereby fully and unconditionally guarantees to each Holder of such Security, and to the Trustee on behalf of such Holder, the due and punctual payment of the principal of, and premium, if any, and interest, if any, on such Security when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of such Security and of this Indenture. In case of the failure of the Company punctually to make any such payment, such Guarantor hereby agrees to cause such payment to be made punctually when and as the same shall become due and payable, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, and as if such payment were made by the Company.

The Guarantor of any Security hereby agrees that its obligations hereunder shall be absolute and unconditional irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of such Security or this Indenture, any failure to enforce the provisions of such Security or this Indenture, or any waiver, modification or indulgence granted to the Company with respect thereto, by the Holder of such Security or the Trustee or any other circumstance which may otherwise constitute a legal or equitable discharge or defense of a surety or guarantor; provided, however, that, notwithstanding the foregoing, no such waiver, modification or indulgence shall, without the consent of any Guarantor, increase the principal amount of such Security, or increase the interest rate thereon, change any redemption provisions thereof (including any change to increase any premium payable upon redemption thereof) or change the Stated Maturity of any payment thereon, or increase the principal amount of any Original Issue Discount Security that would be due and payable upon a declaration of acceleration or the maturity thereof pursuant to Section 6.02 of this Indenture.

The Guarantor of any Security hereby waives the benefits of diligence, presentment, demand for payment, any requirement that the Trustee or any of the Holders exhaust any right or take any action against the Company or any other Person, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest or notice with respect to any Security or the indebtedness evidenced thereby and all demands whatsoever, and covenants that its obligations hereunder will not be discharged in respect of such Security except by complete performance of the obligations of such Guarantor contained in such Security and in this Indenture. Any Guarantee of any Guarantor hereunder shall constitute a guaranty of payment and not of collection. The Guarantor of any Security hereby agrees that, in the event of a default in payment of principal, or premium, if any, or interest, if any, on such Security, whether at its Stated Maturity, by declaration of acceleration, call for redemption or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Security, subject to the terms and conditions set forth in this Indenture, directly against such Guarantor to enforce the obligation of such Guarantor hereunder without first proceeding against the Company.

The obligations of the Guarantor of any Security hereunder with respect to such Security shall be continuing and irrevocable until the date upon which the entire principal of, premium, if any, and interest, if any, on such Security has been, or has been deemed pursuant to the provisions of Article IV of this Indenture to have been, paid in full or otherwise discharged.

The Guarantor of any Security shall be subrogated to all rights of the Holders of such Security against the Company in respect of any amounts paid by the Guarantor on account of such Security pursuant to the provisions of this Indenture; provided, however, that such Guarantor shall not be entitled to enforce or to receive any payments arising out of, or based upon, such right of subrogation until the principal of, and premium, if any, and interest, if any, on all Securities issued hereunder that are due and payable shall have been paid in full.

The Guarantee by any Guarantor of any Security shall remain in full force and effect and continue notwithstanding any petition filed by or against the Company for liquidation or reorganization, the Company becoming insolvent or making an assignment for the benefit of creditors or a receiver or trustee being appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or reinstated, as the case may be, if at any time payment of such Security, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any Holder of such Security, whether as a "voidable preference," "fraudulent transfer," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned on a Security, such Security shall, to the fullest extent permitted by law, be reinstated and deemed paid only by such amount paid and not so rescinded, reduced, restored or returned.

No Guarantor shall consolidate with or merge into any other Person or sell, convey or transfer all or substantially all its properties and assets to any Person, and no Guarantor shall permit any Person to consolidate with or merge into such Guarantor, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance or transfer is made is an Affiliate of the Company, and no Guarantor shall lease all or substantially all its properties and assets to any Person (whether or not such an Affiliate), unless, in any such case:

- (1) in case such Guarantor shall consolidate with or merge into another Person or sell, convey, transfer or lease all or substantially all its properties and assets to any Person, the Person formed by such consolidation or into which such Guarantor is merged or the Person which acquires by sale, conveyance or transfer, or which leases, all or substantially all the properties and assets of such Guarantor shall be a corporation, partnership or trust, shall be organized and validly existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the performance or observance of every covenant of this Indenture and any Guarantees on the part of such Guarantor to be performed or observed;
- (2) immediately after giving effect to such transaction no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and
- (3) such Guarantor has delivered to the Trustee a Guarantor's Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation of any Guarantor with, or merger of such Guarantor into, any other Person or any sale, conveyance, transfer or lease of all or substantially all the properties and assets of such Guarantor in accordance with this paragraph, the successor Person formed by such consolidation or into which such Guarantor is merged or to which such sale, conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, such Guarantor under this Indenture with the same effect as if such successor Person had been named as such Guarantor herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and any Guarantees of such Guarantor.



Upon (i) a consolidation or merger of any Guarantor with or into, or a sale, conveyance or transfer of all or substantially all the properties and assets of any Guarantor to, any other Person or any consolidation or merger of any Person with or into any Guarantor, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance or transfer is made is not an Affiliate of the Company or (ii) any sale, conveyance or transfer (including by way of merger) by the Company or any Subsidiary thereof of all or substantially all the Capital Stock of any Guarantor to any Person that is not an Affiliate of the Company, such Guarantor shall be deemed to be automatically and unconditionally released and discharged from all its obligations under its Guarantees and under this Article XI without any further action required on the part of the Trustee or any Holder. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officers' Certificate certifying as to the compliance with this paragraph of Article XI. The Company may, at its option, at any time and from time to time, cause any Guarantor to be automatically and unconditionally released and discharged from all its obligations under its Guarantees with respect to Securities of all series guaranteed by Guarantees of such Guarantor and under this Article XI upon (i) any conditions for such release provided with respect to Securities of such series in accordance with Section 2.01 having been satisfied and (ii) delivery by the Company to the Trustee of a Company Order relating to such release and discharge. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officers' Certificate certifying as to the compliance with this paragraph of Article XI.

Anything in this Indenture, the Securities or any Guarantee to the contrary notwithstanding, the obligations of any Guarantor under its Guarantees and this Indenture shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor, result in the obligations of such Guarantor under its Guarantees and this Indenture not constituting a fraudulent advance or fraudulent transfer under any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state or other law affecting the rights of creditors generally.

No Guarantee by any Guarantor of any Security, whether or not such Guarantee is or is to be endorsed thereon, shall be valid and obligatory for any purpose with respect to such Security until the certificate of authentication on such Security shall have been signed by or on behalf of the Trustee.

## **ARTICLE XII MISCELLANEOUS**

### **SECTION 12.01 *Trust Indenture Act Controls.***

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by operation of TIA § 318(c), the imposed duties shall control.

### **SECTION 12.02 *Notices.***

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

If to the Company:

Matador Resources Company  
5400 LBJ Freeway, Suite 1500  
Dallas, Texas 75240  
Attn: Chief Financial Officer  
Telephone: (972) 371-5200

With a copy to:

Matador Resources Company  
5400 LBJ Freeway, Suite 1500

Dallas, Texas 75240  
Attn: General Counsel  
Telephone: (972) 371-5200

And a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to the Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

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

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

Any notice or communication to a Holder shall be mailed by first-class mail, postage prepaid, to the Holder's address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except in the case of notice to the Trustee, it is duly given only when received.

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

All notices or communications, including without limitation notices to the Trustee or the Company by Holders, shall be in writing, except as otherwise set forth herein.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

*SECTION 12.03 Communication by Holders with Other Holders.*

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 12.04 *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee at the expense of the Company:

- (1) an Officers' Certificate (which shall include the statements set forth in Section 12.05) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel (which shall include the statements set forth in Section 12.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been complied with.

SECTION 12.05 *Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) shall comply with the provisions of TIA § 314(e) and shall include:

- (1) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

SECTION 12.06 *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or the Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 12.07 *Legal Holidays.*

If a payment date is a Legal Holiday at a Place of Payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

SECTION 12.08 *No Recourse Against Others.*

A director, officer, employee, stockholder, partner or other owner of the Company or the Trustee, as such, shall not have any liability for any obligations of the Company under the Securities or for any obligations of the Company or the Trustee under this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release shall be part of the consideration for the issue of Securities.

SECTION 12.09 *Governing Law.*

**THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.**

SECTION 12.10 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or any Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 12.11 *Successors.*

All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 12.12 *Severability.*

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall, to the fullest extent permitted by applicable law, not in any way be affected or impaired thereby.

SECTION 12.13 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 12.14 *Table of Contents, Headings, etc.*

The table of contents, cross-reference table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

MATADOR RESOURCES COMPANY

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_

Name:

Title:

## [LETTERHEAD OF HAYNES AND BOONE LLP]

April 9, 2013

Matador Resources Company  
5400 LBJ Freeway, Suite 1500  
Dallas, Texas 75240

Re: Matador Resources Company Shelf Registration Statement, filed on Form S-3, of Debt Securities, Guarantees, Common Stock, Preferred Stock and Warrants with an aggregate offering price not to exceed \$300,000,000

Ladies and Gentlemen:

We have acted as counsel to Matador Resources Company, a Texas corporation (the "**Company**"), and each of Longwood Gathering and Disposal Systems, LP, a Texas limited partnership ("**Longwood LP**"), Longwood Gathering and Disposal Systems GP, Inc., a Texas corporation ("**Longwood GP**"), Matador Production Company, a Texas corporation ("**MPC**"), MRC Energy Company, a Texas corporation ("**Energy**"), MRC Permian Company, a Texas corporation ("**Permian**"), and MRC Rockies Company, a Texas corporation ("**Rockies**" and, collectively with Longwood LP, Longwood GP, MPC, Energy and Permian, the "**Co-Registrants**") with respect to certain legal matters in connection with the registration by the Company and the Co-Registrants, under the Securities Act of 1933, as amended (the "**Securities Act**"), of the offer and sale by the Company from time to time, pursuant to Rule 415 of the Securities Act, of: (i) shares of common stock of the Company (the "**Common Stock**"), (ii) shares of preferred stock of the Company (the "**Preferred Stock**"), (iii) unsecured debt securities of the Company, which may be either senior or subordinated and may be issued in one or more series, consisting of notes, debentures or other evidences of indebtedness (the "**Debt Securities**"), certain of which may be convertible or exchangeable into Common Stock or Preferred Stock, (iv) guarantees of the Debt Securities (the "**Guarantees**") by one or more of the Co-Registrants, and (v) warrants for the purchase of Common Stock, Preferred Stock, Debt Securities or other securities (the "**Warrants**," and together with the Common Stock, the Preferred Stock, the Debt Securities and the Guarantees, the "**Securities**").

The aggregate public offering price of the Securities to be offered and sold by the Company, pursuant to a registration statement on Form S-3 (the "**Registration Statement**"), to which this opinion is an exhibit, will not exceed \$300,000,000. The Securities will be offered in amounts, at prices, and on terms to be determined in light of market conditions at the time of sale and to be set forth in supplements to the prospectus (each a "**Prospectus Supplement**") contained in the Registration Statement.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of: (i) the Certificate of Formation and Bylaws of the Company, each as amended and/or restated as of the date hereof, (ii) the organizational documents of each of the Co-Registrants, (iii) the Registration Statement and all exhibits thereto, (iv) the minutes and records of the corporate proceedings of the Company and the Co-Registrants with respect to the filing of the Registration

Statement, (v) the specimen Common Stock certificate, (vi) the forms of senior debt indenture and subordinated debt indenture (together, the "**Indentures**") filed as exhibits to the Registration Statement and (vii) such other certificates, statutes, instruments and documents as we considered appropriate for purposes of the opinions hereafter expressed.

In making the foregoing examinations, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents submitted to us as certified or photostatic copies thereof and the authenticity of the originals of such latter documents.

As to various questions of fact material to the opinions expressed below, we have, without independent third party verification of their accuracy, relied in part, and to the extent we deemed reasonably necessary or appropriate, upon the representations and warranties of the Company and/or the Co-Registrants contained in such documents, records, certificates, instruments or representations furnished or made available to us by the Company and/or the Co-Registrants.

In connection with this opinion, we have assumed that prior to, or in connection with, the issuance of any Securities: (i) the Company, Longwood GP, MPC, Energy, Permian and Rockies will continue to be incorporated and in existence and good standing under the laws of the State of Texas, (ii) Longwood LP will continue to be organized and in existence under the laws of the State of Texas, (iii) the Registration Statement and any amendments thereto (including post-effective amendments) and any and all Prospectus Supplement(s) will have become effective, (iv) a Prospectus Supplement(s) will have been prepared and filed with the Securities and Exchange Commission (the "**Commission**") properly describing the Securities offered thereby, (v) no stop order of the Commission preventing or suspending the use of the prospectus contained in the Registration Statement or any Prospectus Supplement will have been issued, (vi) the prospectus contained in the Registration Statement and any required Prospectus Supplement will have been delivered to the purchaser of the Securities as required in accordance with applicable law, (vii) all Securities will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and the applicable Prospectus Supplement, (viii) any securities issuable upon conversion, exchange, redemption or exercise of any Securities will be duly and validly authorized and, if appropriate, reserved for issuance upon such conversion, exchange, redemption or exercise, (ix) any applicable Indenture and Indenture supplement entered into in connection with the issuance of Debt Securities will comply with applicable law and be enforceable in all respects in accordance with its terms, (x) in connection with the sale of Warrants, any required warrant agreement will have been executed and delivered by all applicable parties and will be enforceable in all respects in accordance with its terms, (xi) at the time of any offering or sale of any shares of Common Stock or Preferred Stock, the Company will have such number of shares of Common Stock or Preferred Stock, as set forth in such offering or sale, authorized, created and available for issuance and (xii) a definitive purchase, underwriting or similar agreement with respect to any Securities offered will have been duly authorized and validly executed and delivered by the Company and/or the Co-Registrants and the other parties thereto and will be enforceable obligations of the parties thereto.

Based on the foregoing, and subject to the assumptions, qualifications, limitations, and exceptions set forth herein, we are of the opinion that:

1. When: (a) the Warrants have been duly executed and delivered (including, without limitation, the adoption by the Board of Directors (or a committee thereof) of the Company of resolutions duly authorizing the issuance and delivery of the Warrants), and issued and sold in the form and in the manner contemplated in the Registration Statement and the related Prospectus Supplement(s), (b) the terms of the Warrants as executed and delivered are as described in the Registration Statement and the related Prospectus Supplement(s) and (c) the Warrants have been duly executed and authenticated in accordance with the applicable warrant agreement and issued and sold as contemplated in the Registration Statement and the related Prospectus Supplement(s), the Warrants will constitute valid and legally binding obligations of the Company.

2. Upon: (a) due adoption by the Board of Directors of the Company of resolutions to duly establish a series of Preferred Stock in accordance with the terms of the Certificate of Formation and applicable law, (b) filing by the Company of a certificate of designation of preferences, rights and limitations with the Secretary of State of the State of Texas in accordance with and as required by applicable law, (c) due adoption by the Board of Directors (or a committee thereof) of the Company of resolutions duly authorizing the issuance and delivery of Preferred Stock in form and content as required by applicable law and (d) issuance and delivery of, and payment for, such shares in the manner contemplated by the Registration Statement and the related Prospectus Supplement(s) and by such resolutions, such shares of such series of Preferred Stock (including any Preferred Stock duly issued: (i) upon the exchange or conversion of Debt Securities that are exchangeable or convertible into Preferred Stock or (ii) upon the exercise of Warrants exercisable for Preferred Stock) will be validly issued, fully paid and nonassessable.

3. Upon adoption by the Board of Directors (or a committee thereof) of the Company of resolutions in form and content as required by applicable law approving the issuance and the terms of the offering and sale of shares of Common Stock and upon issuance and delivery of and payment for such shares in the manner contemplated by the Registration Statement and the related Prospectus Supplement(s) and by such resolutions, such shares of Common Stock (including any Common Stock duly issued: (i) upon the exchange or conversion of any shares of Preferred Stock that are exchangeable or convertible into Common Stock, (ii) upon the exercise of any Warrants exercisable for Common Stock or (iii) upon the exchange or conversion of Debt Securities that are exchangeable or convertible into Common Stock) will be validly issued, fully paid and nonassessable.

4. When: (a) the Debt Securities have been duly established in accordance with the applicable Indentures (including, without limitation, the adoption by the Board of Directors (or a committee thereof) of the Company of resolutions duly authorizing the issuance and delivery of the Debt Securities) duly authenticated by the trustee and duly executed and delivered on behalf of the Company against payment therefor in accordance



with the terms and provisions of the applicable Indenture and Indenture supplement (if any) and as contemplated by the Registration Statement and the related Prospectus Supplement(s), (b) the applicable Indenture and Indenture supplement (if any) relating either to senior Debt Securities or subordinated Debt Securities has been duly qualified under the Trust Indenture Act of 1939, as amended, (c) the trustee the senior debt Indenture and Indenture supplement (if any) or the subordinated debt Indenture and Indenture supplement (if any), as applicable, is qualified to act as trustee under applicable law and such senior debt Indenture or Indenture supplement (if any) or subordinated debt Indenture or Indenture supplement (if any), as applicable, (d) the applicable Indenture and Indenture supplement (if any) have been duly executed and delivered by the Company, any applicable Co-Registrant and the trustee thereunder becoming enforceable obligations of the parties thereto and (e) such Debt Securities have been duly executed and authenticated in accordance with the applicable Indenture and Indenture supplement (if any) and issued and sold as contemplated in the Registration Statement and the related Prospectus Supplement(s), such Debt Securities will constitute valid and legally binding obligations of the Company.

5. When: (a) the applicable Indenture and Indenture supplement (if any) have been duly executed and delivered by the Company, the applicable Co-Registrant and the trustee thereunder becoming enforceable obligations of the parties thereto, (b) the directors and/or general partners of the applicable Co-Registrant have duly authorized resolutions authorizing the execution, delivery and performance of the Guarantees, (c) the Guarantees have been duly established including, without limitation, due adoption by the directors and/or general partners of the applicable Co-Registrant of resolutions duly authorizing the issuance and delivery of the Guarantees in form and content as required by applicable law and (d) such Guarantees have been duly executed and delivered on behalf of the applicable Co-Registrant in accordance with the provisions of the applicable Indenture and Indenture supplement (if any) and in accordance with any governing documents of such Co-Registrant, the Guarantees will constitute valid and legally binding obligations of the applicable Co-Registrant.

The opinions set forth above are subject to the following qualifications and exceptions:

1. The above opinions are subject to: (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of general application affecting creditors' rights, (ii) provisions of applicable law pertaining to the voidability of preferential or fraudulent transfers and conveyances and (iii) the fact that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.
2. The above opinions are subject to the effect of general principles of equity, including (without limitation) concepts of materiality, reasonableness, good faith and fair dealing, and other similar doctrines affecting the enforceability of agreements generally (regardless of whether considered in a proceeding in equity or at law).

3. In rendering the opinions set forth above, we have assumed that, at the time of the issuance, authentication and delivery of a series of Securities, (i) the resolutions of the Company and the Co-Registrants referred to above will not have been modified or rescinded, (ii) there will not have occurred any change in the law affecting the authorization, execution, delivery, validity or enforceability of the Securities, (iii) all third party consents required in connection with the sale of the Securities will have been received by the Company or the Co-Registrant, (iv) the Registration Statement will have been declared effective by the Commission and will continue to be effective, (v) none of the particular terms of a series of Securities will violate any applicable law or the terms of any applicable governing documents and (vi) neither the issuance and sale thereof nor the compliance by the Company with the terms thereof will result in a violation of any agreement or instrument then binding upon the Company or any order of any court or governmental body having jurisdiction over the Company.

The opinions expressed herein are limited to the federal laws of the United States of America, and, to the extent relevant to the opinions expressed herein, (i) the laws of the State of Texas (including the statutory provisions and reported judicial decisions interpreting the state laws of the State of Texas) and (ii) the laws of the State of New York (including the statutory provisions and reported judicial decisions interpreting the state laws of the State of New York).

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Prospectus forming a part of the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act and the rules and regulations thereunder.

Very truly yours,

/s/ Haynes and Boone, LLP

HAYNES AND BOONE, LLP

## RATIO OF EARNINGS TO FIXED CHARGES

The following table contains our consolidated ratio of earnings to fixed charges for the periods indicated. You should read these ratios in connection with our consolidated financial statements, including the notes to those financial statements (amounts in table in thousands, except ratios).

	For the years ended December 31,				
	2012	2011	2010	2009	2008
Income (loss) before income taxes	\$ (34,691)	\$ (15,830)	\$ 9,898	\$ (24,350)	\$ 123,901
Add:					
Fixed charges (see below)	2,835	2,206	55	54	48
Amortization of capitalized interest	187	7	—	—	—
Less:					
Interest capitalized	(1,574)	(1,278)	—	—	—
Total earnings	\$ (33,243)	\$ (14,895)	\$ 9,953	\$ (24,296)	\$ 123,949
Fixed charges					
Interest expensed	\$ 1,002	\$ 683	\$ 3	\$ —	\$ —
Interest capitalized	1,574	1,278	—	—	—
Amortized premiums, discounts & capitalized expenses related to indebtedness	231	221	33	33	26
Estimate of interest within rental expense	28	24	19	21	22
Total fixed charges	\$ 2,835	\$ 2,206	\$ 55	\$ 54	\$ 48
Ratio of earnings to fixed charges	(a)	(b)	180.0	(c)	2,604.0

- (a) During the period noted, our coverage ratio was less than 1:1. We would have needed to generate additional earnings of approximately \$36.1 million during the year ended December 31, 2012 to achieve a coverage ratio of 1:1.
- (b) During the period noted, our coverage ratio was less than 1:1. We would have needed to generate additional earnings of approximately \$17.1 million during the year ended December 31, 2011 to achieve a coverage ratio of 1:1.
- (c) During the period noted, our coverage ratio was less than 1:1. We would have needed to generate additional earnings of approximately \$24.4 million during the year ended December 31, 2009 to achieve a coverage ratio of 1:1.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our reports dated March 18, 2013 with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report on Form 10-K for the year ended December 31, 2012 of Matador Resources Company, which are incorporated by reference in this Registration Statement. We consent to the incorporation by reference in the Registration Statement of the aforementioned reports, and to the use of our name as it appears under the caption "Experts."

/s/ GRANT THORNTON LLP

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Dallas, Texas

April 9, 2013



## CONSENT OF INDEPENDENT PETROLEUM ENGINEERS AND GEOLOGISTS

We hereby consent to the use of the name Netherland, Sewell & Associates, Inc. and the references to our audits of Matador Resources Company's proved oil and natural gas reserves estimates and future net revenue at December 31, 2012, and the corresponding audit letter, dated January 29, 2013, in this Registration Statement on Form S-3 of Matador Resources Company. We also consent to the reference to our firm under the caption "Experts" in the Prospectus, which is part of this Registration Statement.

NETHERLAND, SEWELL & ASSOCIATES, INC.

By: /s/ C.H. (Scott) Rees III  
C.H. (Scott) Rees III  
Chairman and Chief Executive Officer

Dallas, Texas  
April 8, 2013

April 9, 2013

**Via EDGAR**

United States Securities and Exchange Commission  
100 F Street, NE  
Washington DC 20549

Re: Matador Resources Company  
Form S-3  
Filed April 9, 2013

To Whom It May Concern:

Today, Matador Resources Company (the "**Company**") filed a universal shelf registration statement on Form S-3 with the Securities and Exchange Commission. The Company understands that it may not request acceleration of effectiveness and the Form S-3 may not be declared effective until the Company's proxy statement is filed later this month.

If you have any questions, please contact me at 214.651.5119.

Very truly yours,

/s/ W. Bruce Newsome

W. Bruce Newsome  
Direct Phone Number: 214.651.5119  
Direct Fax Number: 214.200.0636  
Bruce.newsome@haynesboone.com

cc: Mr. Craig N. Adams