

# WPX ENERGY, INC.

## **FORM 8-K** (Current report filing)

Filed 09/08/14 for the Period Ending 09/03/14

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| Address     | ONE WILLIAMS CENTER<br>TULSA, OK 74172 |
| Telephone   | 9185732000                             |
| CIK         | 0001518832                             |
| Symbol      | WPX                                    |
| SIC Code    | 1311 - Crude Petroleum and Natural Gas |
| Industry    | Oil & Gas Operations                   |
| Sector      | Energy                                 |
| Fiscal Year | 12/31                                  |

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

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**FORM 8-K**

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

**Date of report (Date of earliest event reported): September 3, 2014**

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**WPX Energy, Inc.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**1-35322**  
(Commission  
File Number)

**45-1836028**  
(I.R.S. Employer  
Identification No.)

**3500 One Williams Center, Tulsa, Oklahoma**  
(Address of Principal Executive Offices)

**74172-0172**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (855) 979-2012**

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.***Senior Notes*

On September 8, 2014, WPX Energy, Inc. (the “Company”) completed an offering of \$500 million aggregate principal amount of the Company’s 5.25% Senior Notes due 2024 (the “Notes”) under the Company’s automatic shelf registration statement on Form S-3 (No. 333-198523) filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), on September 3, 2014.

The Notes were issued under an Indenture, dated as of September 8, 2014 (the “Base Indenture”), as supplemented by a Supplemental Indenture, dated as of September 8, 2014 (the “First Supplemental Indenture”), each between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (as so supplemented, the “Indenture”).

The Notes are the Company’s senior unsecured obligations ranking equally with the Company’s other existing and future senior unsecured indebtedness. The Notes bear interest at a rate of 5.25% per annum and were priced at par. The Notes will pay interest semi-annually in cash in arrears on March 15 and September 15 of each year commencing on March 15, 2015. The Notes will mature on September 15, 2024. At any time or from time to time prior to June 15, 2024, the Company may, at its option, redeem some or all of the Notes at a specified “make whole” premium as described in the Indenture. The Company also has the option, at any time or from time to time on or after June 15, 2024, to redeem some or all of the Notes at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, as more fully described in the Indenture. The Indenture contains covenants that, among other things, restrict the Company’s ability to grant liens on its assets and merge, consolidate or transfer or lease all or substantially all of its assets, subject to certain qualifications and exceptions.

The foregoing description of the Notes and the Indenture is qualified in its entirety by reference to the Base Indenture, a copy of which is filed as Exhibit 4.1 to this Current Report on Form 8-K, and the Supplemental Indenture, a copy of which is filed as Exhibit 4.2 to this Current Report on Form 8-K. Each of the foregoing documents is incorporated by reference herein.

*Underwriting Agreement*

On September 3, 2014, the Company entered into an underwriting agreement (the “Underwriting Agreement”) with Wells Fargo Securities, LLC, Citigroup Global Markets Inc. and RBS Securities Inc., as representatives of the several underwriters identified on Exhibit A thereto (collectively, the “Underwriters”), to sell the Notes to the Underwriters.

The Underwriting Agreement contains customary representations, warranties, conditions to closing, indemnification and obligations of the parties. The Company has also agreed to indemnify the Underwriters against certain liabilities, including civil liabilities under the Securities Act, or to contribute to payments that the Underwriters may be required to make in respect of those liabilities.

Certain of the Underwriters perform and have performed commercial and investment banking and advisory services for the Company from time to time for which they receive and have received customary fees and expenses. The Underwriters may, from time to time, engage in transactions with and perform services for the Company in the ordinary course of their business for which they will receive fees and expenses.

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**Item 9.01 Financial Statement and Exhibits.****(d) Exhibits.**

- 1.1 Underwriting Agreement, dated September 3, 2014, among WPX Energy, Inc. and Wells Fargo Securities, LLC, Citigroup Global Markets Inc. and RBS Securities Inc., as representatives of the several underwriters named therein.
- 4.1 Indenture, dated as of September 8, 2014, between WPX Energy, Inc. and The Bank of New York Mellon Trust Company, N.A., as trustee.
- 4.2 First Supplemental Indenture, dated as of September 8, 2014, between WPX Energy, Inc. and The Bank of New York Mellon Trust Company, N.A., as trustee.
- 4.3 Form of Global Note for the 5.25% Senior Notes due 2024 (included in Exhibit 4.2).
- 5.1 Opinion of Weil, Gotshal & Manges LLP.

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## SIGNATURES

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

WPX ENERGY, INC.

By: /s/ Stephen E. Brilz  
Stephen E. Brilz  
Vice President and Secretary

DATED: September 8, 2014

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## EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Description</u>  |
|--------------------|---|
| 1.1                | Underwriting Agreement, dated September 3, 2014, among WPX Energy, Inc. and Wells Fargo Securities, LLC, Citigroup Global Markets Inc. and RBS Securities Inc., as representatives of the several underwriters named therein. |
| 4.1                | Indenture, dated as of September 8, 2014, between WPX Energy, Inc. and The Bank of New York Mellon Trust Company, N.A., as trustee.   |
| 4.2                | First Supplemental Indenture, dated as of September 8, 2014, between WPX Energy, Inc. and The Bank of New York Mellon Trust Company, N.A., as trustee.  |
| 4.3                | Form of Global Note for the 5.25% Senior Notes due 2024 (included in Exhibit 4.2).  |
| 5.1                | Opinion of Weil, Gotshal & Manges LLP.  |

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\$500,000,000

**WPX ENERGY, INC.**

5.25% Senior Notes due 2024

UNDERWRITING AGREEMENT

Dated: September 3, 2014

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## TABLE OF CONTENTS

|   | Page |
|---|------|
| SECTION 1. Representations and Warranties                                 | 2    |
| SECTION 2. Sale and Delivery to Underwriters; Closing                     | 14   |
| SECTION 3. Covenants of the Company                                       | 15   |
| SECTION 4. Payment of Expenses  | 19   |
| SECTION 5. Conditions of Underwriters' Obligations                        | 20   |
| SECTION 6. Indemnification  | 24   |
| SECTION 7. Contribution   | 26   |
| SECTION 8. Representations, Warranties and Agreements to Survive Delivery | 27   |
| SECTION 9. Termination of Agreement                                       | 28   |
| SECTION 10. Default by One or More of the Underwriters                    | 28   |
| SECTION 11. Notices   | 29   |
| SECTION 12. Parties   | 29   |
| SECTION 13. Governing Law and Time  | 29   |
| SECTION 14. Waiver of Jury Trial  | 29   |
| SECTION 15. Effect of Headings  | 29   |
| SECTION 16. Definitions   | 29   |
| SECTION 17. Permitted Free Writing Prospectuses                           | 32   |
| SECTION 18. Absence of Fiduciary Relationship                             | 32   |
| SECTION 19. Research Analyst Independence                                 | 33   |
| SECTION 20. Consent to Jurisdiction                                       | 33   |
| SECTION 21. Patriot Act   | 34   |



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## **EXHIBITS**

- Exhibit A – Underwriters
- Exhibit B – Subsidiaries of the Company
- Exhibit C – Form of Pricing Term Sheet
- Exhibit D – Issuer General Use Free Writing Prospectuses
- Exhibit E – Form of Opinion of Company Counsel
- Exhibit F – Form of Opinion of General Counsel of the Company

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\$500,000,000

**WPX ENERGY, INC.**

5.25% Senior Notes due 2024

**UNDERWRITING AGREEMENT**

**September 3, 2014**

Wells Fargo Securities, LLC  
Citigroup Global Markets Inc.  
RBS Securities Inc.  
As Representatives of the several Underwriters  
c/o Wells Fargo Securities, LLC  
301 S. College Street  
Charlotte, North Carolina 28288

Ladies and Gentlemen:

WPX Energy, Inc., a Delaware corporation (the “Company”), confirms its agreement with Wells Fargo Securities, LLC (“Wells Fargo”) and each of the other Underwriters named in Exhibit A hereto (collectively, the “Underwriters,” which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Wells Fargo, Citigroup Global Markets Inc. and RBS Securities Inc. are acting as representatives (in such capacity, the “Representatives”), with respect to the issue and sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective principal amounts set forth in said Exhibit A hereto of \$500,000,000 aggregate principal amount of the Company’s 5.25% Senior Notes due 2024 (the “Securities”). The Securities will be issued pursuant to an indenture (the “Base Indenture”) dated as of the Closing Date (as defined below), between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”). The term “Indenture” as used herein includes the Base Indenture and the First Supplemental Indenture to be dated as of the Closing Date, between the Company and the Trustee (the “First Supplemental Indenture”), establishing the forms and terms of the Securities. Certain terms used in this Agreement are defined in Section 16 hereof.

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

The Company has prepared and previously delivered to you a preliminary prospectus supplement dated September 3, 2014 relating to the Securities and a related prospectus dated September 3, 2014 (the “Base Prospectus”). Such preliminary prospectus supplement and Base Prospectus, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are hereinafter called, collectively, the “Pre-Pricing Prospectus.” Promptly after the execution and delivery of this Agreement, the Company will prepare a prospectus supplement dated September 3, 2014 (the “Prospectus Supplement”) and will file the Prospectus Supplement and the Base Prospectus with

the Commission, all in accordance with the provisions of Rule 430B and Rule 424(b), and the Company has previously advised you of all information (financial and other) that will be set forth therein. The Prospectus Supplement and the Base Prospectus, in the form first furnished to the Underwriters for use in connection with the offering of the Securities (whether to meet the request of purchasers pursuant to Rule 173(d) or otherwise), including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are herein called, collectively, the “Prospectus.”

**SECTION 1. Representations and Warranties .**

(a) Representations and Warranties by the Company . The Company represents and warrants to each Underwriter as of the date hereof, as of the Applicable Time, and as of the Closing Date referred to in Section 2(b) hereof, and agrees with each Underwriter, as follows:

(1) Status as a Well-Known Seasoned Issuer . (A) At the respective times the Registration Statement or any amendments thereto were filed with the Commission, (B) at the time of the most recent amendment to the Registration Statement for the purposes of complying with Section 10(a)(3) of the 1933 Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act or form of prospectus), (C) at any time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Securities in reliance on the exemption of Rule 163 and (D) at the date hereof, the Company was and is a “well-known seasoned issuer” as defined in Rule 405. The Registration Statement is an “automatic shelf registration statement,” as defined in Rule 405 and the Securities, since their registration on the Registration Statement, have been and remain eligible for registration by the Company on such an “automatic shelf registration statement.” The Company has not received from the Commission any notice pursuant to Rule 401(g)(2) objecting to the use of an automatic shelf registration statement. Any written communication that was an offer relating to the Securities made by the Company or any person acting on its behalf (within the meaning, for this sentence only, of Rule 163(c)) prior to the filing of the Registration Statement has been filed with the Commission in accordance with Rule 163 and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

(2) Compliance with Registration Requirements . The Company meets the requirements for use of Form S-3 under the 1933 Act and the Securities have been duly registered under the 1933 Act pursuant to the Registration Statement. The Registration Statement and any post-effective amendments thereto have become effective under the 1933 Act and no stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act and no proceedings for that purpose or pursuant to Section 8A of the 1933 Act against the Company or related to the issuance and sale by the Company of the Securities have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information has been complied with. The Registration Statement was initially filed with the Commission on September 3, 2014.

(3) Registration Statement, Prospectus and Disclosure at Time of Sale. At the respective times that the Registration Statement and any amendments thereto became effective, at each time subsequent to the filing of the Registration Statement that the Company filed an Annual Report on Form 10-K (or any amendment thereto) with the Commission, at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2), and at the Closing Date, the Registration Statement and any amendments to any of the foregoing complied and will comply in all material respects with the requirements of the 1933 Act, the 1933 Act Regulations and the 1939 Act and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

As of its date, at the respective times the Prospectus or any amendment or supplement thereto was filed pursuant to Rule 424(b), at the Closing Date, and at any time when a prospectus is required (or, but for the provisions of Rule 172, would be required) by applicable law to be delivered in connection with sales of Securities (whether to meet the requests of purchasers pursuant to Rule 173(d) or otherwise), neither the Prospectus nor any amendments or supplements thereto included or will include an untrue statement of a material fact or omitted or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

As of the Applicable Time and as of each time prior to the Closing Date that an investor agrees (orally or in writing) to purchase any Securities from the Underwriters, neither (x) the Pricing Term Sheet (as defined in Section 3(n) below), any other Issuer General Use Free Writing Prospectuses, if any, issued at or prior to the Applicable Time and the Pre-Pricing Prospectus as of the Applicable Time, all considered together (collectively, the “General Disclosure Package”), nor (y) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included or will include an untrue statement of a material fact or omitted or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Each preliminary prospectus and the Prospectus and any amendments or supplements to any of the foregoing filed as part of the Registration Statement or any amendment thereto, filed pursuant to Rule 424 under the 1933 Act, or delivered to the Underwriters for use in connection with the offering of the Securities, complied when so filed or when so delivered, as the case may be, in all material respects with the 1933 Act and the 1933 Act Regulations.

The representations and warranties in the preceding paragraphs of this Section 1(a)(3) do not apply to statements in or omissions from the Registration Statement, any preliminary prospectus, the Prospectus or any Issuer Free Writing Prospectus or any amendment or supplement to any the foregoing made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein, it being understood and agreed that the only such information furnished by the Underwriters as aforesaid consists of the information described as such in Section 6(b) hereof.

At the respective times that the Registration Statement or any amendment thereto was filed, as of the earliest time after the filing of the Registration Statement that the Company or any other offering participant made a bona fide offer of the Securities within the meaning of Rule 164(h)(2), and at the date hereof, the Company was not and is not an “ineligible issuer” as defined in Rule 405, in each case without taking into account any determination made by the Commission pursuant to paragraph (2) of the definition of such term in Rule 405; and without limitation to the foregoing, the Company has at all relevant times met, meets and will at all relevant times meet the requirements of Rule 164 for the use of a free writing prospectus (as defined in Rule 405) in connection with the offering contemplated hereby.

The copies of the Registration Statement and any amendments thereto and the copies of each preliminary prospectus, each Issuer Free Writing Prospectus that is required to be filed with the Commission pursuant to Rule 433 and the Prospectus and any amendments or supplements to any of the foregoing, that have been or subsequently are delivered to the Underwriters in connection with the offering of the Securities (whether to meet the request of purchasers pursuant to Rule 173(d) or otherwise) were and will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T of the Commission. For purposes of this Agreement, references to the “delivery” or “furnishing” of any of the foregoing documents to the Underwriters, and any similar terms, include, without limitation, electronic delivery.

Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offering and sale of the Securities did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus that has not been superseded or modified.

(4) Incorporated Documents. The documents incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus and the Prospectus, at the respective times they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the 1934 Act Regulations and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(5) Independent Accountants. Ernst & Young LLP, who have reported upon the audited financial statements and any supporting schedules included in the Registration Statement, the General Disclosure Package and the Prospectus are independent public accountants with respect to the Company as required by the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations and the PCAOB.

(6) Financial Statements. The historical financial statements included in the Registration Statement, the General Disclosure Package and the Prospectus comply as to form in all material respects with the applicable requirements of Regulation S-X under the 1933 Act and present fairly in all material respects the financial condition, results of operations and cash flows of the combined businesses purported to be shown thereby at the dates and for the periods indicated, all in conformity with GAAP applied on a consistent basis throughout the periods involved (except as otherwise noted therein). The unaudited pro forma financial statements included in the Form 8-K filed by the Company on September 3, 2014 and incorporated by reference into the Registration Statement, the General Disclosure Package and the Prospectus include assumptions that provide a reasonable basis for presenting the significant effects directly attributable to the transactions and events described in such Form 8-K, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma adjustments reflect the proper application of those adjustments to the historical financial statement amounts in the unaudited pro forma financial statements incorporated by reference into the Registration Statement, the General Disclosure Package and the Prospectus. The aforementioned unaudited pro forma financial statements incorporated by reference into the Registration Statement, the General Disclosure Package and the Prospectus comply as to form in all material respects with the applicable requirements of Regulation S-X under the 1933 Act for a probable disposition. The Company's ratios of earnings to fixed charges included in the Registration Statement, the General Disclosure Package and the Prospectus comply with Item 503(d) of Regulation S-K of the Commission. All "non-GAAP financial measures" (as such term is defined in the rules and regulations of the Commission), if any, contained in the Registration Statement, the General Disclosure Package and the Prospectus comply with Item 10 of Regulation S-K of the Commission, to the extent applicable.

(7) No Material Adverse Change in Business. Since the date of the latest audited financial statements included in the General Disclosure Package, neither the Company nor any of its Significant Subsidiaries (as defined below) has sustained any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, or incurred any material liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, which would be reasonably likely to result in any Material Adverse Effect (as defined below), nor has there been any development involving a material adverse change in or affecting the financial condition, results of operations, business or prospects of the Company and its subsidiaries taken as a whole, otherwise than as disclosed in the General Disclosure Package and the Prospectus. Since the respective dates as of which information is given in the General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto) or since the date of the General Disclosure Package, there has not been (i) any material change in the capital stock or long-term debt of the Company or its Significant Subsidiaries (taken as a whole), (ii) any material adverse change in or affecting the financial condition, results of operations, business or prospects of the Company or its Significant Subsidiaries (taken as a whole), or (iii) any transaction entered into by any of the Company or its Significant Subsidiaries, other than in the ordinary course of business, that is material to the Company or its Significant Subsidiaries (taken as a whole) other than as disclosed, in the case of each of (i), (ii) or (iii) above, in the General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto).

(8) Good Standing of the Company and Significant Subsidiaries. The Company and each of its “significant subsidiaries,” as defined in Rule 1-02(w) of Regulation S-X under the 1934 Act (each, a “Significant Subsidiary”), has been duly organized, is validly existing and in good standing as a corporation or other business entity under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing would not have a material adverse effect on the financial condition, results of operations, business or prospects of the Company and its subsidiaries taken as a whole (a “Material Adverse Effect”). Each of the Company and each Significant Subsidiary has all power and authority necessary to own or hold its properties and to conduct its business as described in the General Disclosure Package and the Prospectus. The subsidiaries listed on Schedule B hereto are the only “significant subsidiaries” of the Company, as defined in Rule 1-02 (w) of Regulation S-X under the 1934 Act.

(9) Capitalization. All the issued shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable; all of the issued shares of capital stock or other equity interests, as applicable, of each Significant Subsidiary of the Company that are owned directly or indirectly by the Company have been duly authorized and validly issued and are fully paid (to the extent required under such entities’ Organizational Documents) and non-assessable (except as such non-assessability may be affected by Sections 18-607 and 18-804 of the Delaware Limited Liability Company Act or Sections 17-303, 17-607 and 17-804 of the Delaware Revised Uniform Limited Partnership Act) and are owned directly or indirectly by the Company free and clear of all liens, encumbrances, security interests, equities charges or claims (collectively, “Liens”) except (i) as disclosed in the General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto) or (ii) to the extent any such Liens would not have a Material Adverse Effect.

(10) Due Authorization; Authorization of Agreement. The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by the Representatives, constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors’ rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law), and (iii) except as rights to indemnity and contribution hereunder may be limited by federal or state securities laws or principles of public policy.

(11) The Indenture. The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Indenture. The Indenture has been duly authorized by the Company, and upon its execution and delivery by the Company and, assuming due authorization, execution and delivery by the Trustee, will constitute the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law); and the Indenture has been duly qualified under the 1939 Act.

(12) The Securities. The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Securities. The Securities have been duly authorized by the Company and when duly executed by the Company in accordance with the terms of the Indenture and, assuming due authentication, execution and delivery of the Securities by the Trustee in accordance with the terms of the Indenture, upon delivery to the Underwriters against payment therefor in accordance with the terms hereof, will have been validly issued and delivered, and will constitute valid and binding obligations of the Company entitled to the benefits of the Indenture, enforceable against the Company in accordance with their terms, subject to (i) the effects of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law), and (iii) except as rights to indemnity and contribution thereunder may be limited by federal or state securities laws or principles of public policy. .

(13) Description of the Securities and the Indenture. The Securities and the Indenture conform and will conform in all material respects to the respective statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto) and are and will be in substantially the respective forms filed or incorporated by reference, as the case may be, as exhibits to the Registration Statement.

(14) Absence of Defaults and Conflicts. None of the Company or any of its Significant Subsidiaries is (i) in violation of its Organizational Documents, (ii) in default, and no event has occurred which, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, obligation, agreement, covenant or condition contained in any material contract, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it is bound or which any of its properties or assets may be subject or (iii) in violation of any law, ordinance, governmental rule, regulation or court decree to which it or its property or assets may be subject, except, with respect to (ii) or (iii), for any such violations or defaults that would not be reasonably likely, singly or in the aggregate, to have a Material Adverse Effect. The execution and delivery of the Transaction Documents by the Company, the consummation of the transactions contemplated hereby and thereby, the application of the proceeds from the sale of the Securities as described under "Use of Proceeds" in the General Disclosure Package and the Prospectus will not



(i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any Lien, charge or encumbrance upon any property or assets of the Company and its Significant Subsidiaries under, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its Significant Subsidiaries is a party or by which the Company or any of its Significant Subsidiaries is bound or to which any of the property or assets of the Company or any of its Significant Subsidiaries is subject; (ii) result in any violation of the provisions of the Organizational Documents of the Company or any of its Significant Subsidiaries; or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its Significant Subsidiaries or any of their properties or assets, except with respect to clauses (i) and (iii), conflicts, breaches, violations or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(15) Absence of Labor Dispute. No labor disturbance by or dispute with the employees of the Company or any of its affiliates that are dedicated to the Company's business exists or, to the knowledge of the Company, is imminent that would reasonably be expected to have a Material Adverse Effect.

(16) Absence of Proceedings. Except as described in the General Disclosure Package and the Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that would, in the aggregate, reasonably be expected to have a Material Adverse Effect or would, in the aggregate, reasonably be expected to have a material adverse effect on the performance by the Company of its obligations under the Transaction Documents or the consummation of the transactions contemplated hereby and thereby; and to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

(17) Accuracy of Descriptions and Exhibits. The information in the Pre-Pricing Prospectus and the Prospectus under the captions "Description of Notes," "Description of Debt Securities" and "Certain U.S. Federal Tax Consequences" and the information in the Company's Annual Report on Form 10-K for the fiscal year ended 2013 under the captions "Business—Regulatory Matters," "Business—Environmental Matters" and "Legal Proceedings," insofar as they purport to constitute summaries of the terms of statutes, rules or regulations, legal or governmental proceedings or contracts and other documents, constitute accurate summaries of the terms of such statutes, rules and regulations, legal and governmental proceedings and contracts and other documents in all material respects; and there are no franchises, contracts, indentures, mortgages, deeds of trust, loan or credit agreements, bonds, notes, debentures, evidences of indebtedness, leases or other instruments, agreements or documents required to be described or referred to in the Registration Statement, the Pre-Pricing Prospectus or the Prospectus or the documents incorporated or deemed to be incorporated by reference therein or to be filed as exhibits thereto which have not been so described and filed as required.

(18) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign is necessary or required for the execution, delivery or performance by the Company of its obligations under the Transaction Documents, for the offering, issuance, sale or delivery of the Securities hereunder, or for the consummation of any of the other transactions contemplated by this Agreement, in each case on the terms contemplated by the Registration Statement, the General Disclosure Package and the Prospectus, except such as have been obtained under the 1933 Act, the 1933 Act Regulations or the 1939 Act, except for the filing of the Prospectus and the Pricing Term Sheet pursuant to Rules 424(b) and 433, respectively, except as have been obtained prior to the execution hereof and except that no representation is made as to such as may be required under state or foreign securities laws.

(19) Possession of Licenses and Permits. The Company and each of its Significant Subsidiaries have such permits, licenses, franchises, certificates of need and other approvals or authorizations of governmental or regulatory authorities (“Permits”) as are necessary under applicable law to own, hold or lease, as the case may be, and to operate their properties and conduct their businesses in the manner described in the Registration Statement, the General Disclosure Package or the Prospectus, except where the failure to possess such Permits would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Significant Subsidiaries has received notice of any revocation or modification of any such Permits except to the extent that any such revocation or modification would not have a Material Adverse Effect.

(20) Title to Property. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus, the Company has, directly or indirectly through its subsidiaries, good and marketable title to all real property and good title to all personal property described in the Registration Statement, the General Disclosure Package or the Prospectus as being owned by it and valid, legal and defensible title to the interests in oil and gas properties underlying the estimates of the Company’s proved reserves described in the Registration Statement, the General Disclosure Package or the Prospectus, in each case free and clear of all liens, encumbrances and defects except (i) as are described in the Registration Statement, the General Disclosure Package or the Prospectus, (ii) as do not materially interfere with the use made in the aggregate of such properties, as described in the Registration Statement, the General Disclosure Package or the Prospectus, (iii) as are permitted under the Existing Credit Agreement, or (iv) as would not reasonably be expected to have a Material Adverse Effect; and the working interests derived from oil, gas and mineral leases or mineral interests which constitute a portion of the real property held or leased by the Company and its subsidiaries reflect in all material respects the right of the Company and its subsidiaries to explore, develop or produce hydrocarbons from such real property, and the care taken by the Company and its subsidiaries with respect to acquiring or otherwise procuring such leases or mineral interests was generally consistent with standard industry practices in the areas in which the Company and its subsidiaries operate for acquiring or procuring leases and interests therein to explore, develop or produce hydrocarbons.

(21) Investment Company Act. The Company is not, and after giving effect to the offer and sale of the Securities and the application of the proceeds therefrom as described in the General Disclosure Package and the Prospectus, will not be, an “investment company” as defined in the 1940 Act.

(22) Reserve Engineer. Netherland, Sewell & Associates Inc., who issued a report with respect to certain of the Company’s oil and natural gas reserves and who has delivered or will deliver the letters referred to in Sections 5(h) and 5(i) hereof, was, as of the date of such report, and is, as of the date hereof, an independent petroleum engineer with respect to the Company.

(23) Reserve Data. The factual information underlying the estimates of reserves of the Company, which was supplied to the Company’s independent petroleum engineer for the purposes of preparing the audit reports of the estimates of proved reserves included in the Registration Statement, the General Disclosure Package and the Prospectus, including, without limitation, production, costs of operation and development, current prices for production, agreements relating to current and future operations and sales of production, was true and correct in all material respects on the dates such estimates were made and such information was supplied and was prepared in accordance with customary industry practices; other than normal production of the reserves, intervening market commodity price fluctuations, fluctuations in demand for such products, adverse weather conditions, unavailability or increased costs of rigs, equipment, supplies or personnel, the timing of third party operations and other factors, in each case in the ordinary course of business, the Company is not aware of any facts or circumstances that would result in a material adverse change in the aggregate net reserves, or the present value of future net cash flows therefrom, as described in the Registration Statement, the General Disclosure Package and the Prospectus; estimates of such reserves and present values as described in the Registration Statement, the General Disclosure Package and the Prospectus comply in all material respects with the applicable requirements of Regulation S-X and Subpart 1200 of Regulation S-K under the Act.

(24) Environmental Laws. The Company and each of its Significant Subsidiaries (i) are in compliance with all laws, regulations, ordinances, rules, orders, judgments, decrees, permits or other legal requirements of any governmental authority, including without limitation any international, foreign, national, state, provincial, regional, or local authority, relating to pollution, the protection of human health or safety, the environment, or natural resources, or to use, handling, storage, manufacturing, transportation, treatment, discharge, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants (“Environmental Laws”) applicable to such entity, which compliance includes, without limitation, obtaining, maintaining and complying with all permits and authorizations and approvals required by Environmental Laws to conduct their respective businesses, and (ii) have not received notice or otherwise have knowledge of any actual or alleged violation of Environmental Laws, or of any actual or potential liability for or other obligation concerning the presence, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, with respect to (i) and (ii), as may be disclosed in the Registration Statement, the General Disclosure Package and the Prospectus and except where such noncompliance with Environmental Laws, failure to obtain or maintain required permits, authorizations or approvals or failure to comply with the terms and conditions of such permits, authorizations or approvals would not be reasonably likely to have a Material Adverse Effect.

(25) Absence of Registration Rights. There are no persons with registration rights or other similar rights to have any securities (debt or equity) registered pursuant to the Registration Statement or included in the offering contemplated by this Agreement.

(26) FINRA Matters. All of the information provided to the Representatives or to counsel for the Underwriters in connection with any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rule 5110 or 5121 is true, complete and correct.

(27) Tax Returns. The Company and all of its subsidiaries have filed all federal, state, local and foreign income and franchise tax returns which are required to be filed by them and have paid all taxes due, other than those which, if not filed or paid, would not be reasonably expected to have a Material Adverse Effect, or which are being contested in good faith by appropriate proceedings. Except as would not be reasonably expected to have a Material Adverse Effect, no tax deficiency has been determined adversely to the Company or any of its subsidiaries, and the Company has no knowledge of any tax deficiencies that have been, or would reasonably be expected to be asserted.

(28) Insurance. The Company and each of its Significant Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as is reasonable in accordance with customary practices for companies engaged in similar businesses in similar industries for the conduct of their respective businesses and the value of their respective properties.

(29) Accounting and Disclosure Controls. The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the 1934 Act) that complies with the requirements of the 1934 Act and that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company maintains internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences, and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus is prepared in accordance with the Commission's rules and guidelines applicable thereto. As of the date

of the most recent balance sheet of the Company reviewed or audited by Ernst & Young LLP and the audit committee of the board of directors of the Company, there were no material weaknesses in the Company's internal controls, except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus.

The Company maintains disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the 1934 Act); and such disclosure controls and procedures (i) are designed to ensure that information required to be disclosed by the Company in the reports it files or submits under the 1934 Act is accumulated and communicated to the Company's management, including the Company's principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure and (ii) except with respect to the material weaknesses in internal controls disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, such disclosure controls and procedures are effective at a reasonable assurance level to perform the functions for which they were established.

Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, since the date of the most recent balance sheet of the Company reviewed or audited by Ernst & Young LLP and the audit committee of the board of directors of the Company, (i) the Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls that could adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, or (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries; and (ii) there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

(30) Compliance with the Sarbanes-Oxley Act. The Company is in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated in connection therewith.

(31) Pending Proceedings and Examinations; Comment Letters. The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the 1933 Act, and the Company is not the subject of a pending proceeding under Section 8A of the 1933 Act. The Company has provided the Representatives with true, complete and correct copies of any written comments received from the Commission by the Company or its legal counsel or accountants, and of any transcripts made by the Company, its legal counsel or accountants of any oral comments received from the Commission, with respect to the Registration Statement, any preliminary prospectus, the Prospectus, any Issuer Free Writing Prospectus or any document incorporated or deemed to be incorporated by reference therein or any amendments or supplements to any of the foregoing and of all written responses thereto (in each case other than comment letters or written responses that are publicly available on EDGAR).

(32) Absence of Manipulation. The Company and its affiliates (as defined in Rule 501(b) of Regulation D under the 1933 Act) have not taken, directly or indirectly, any action designed to or that might reasonably be expected to cause or result, under the 1934 Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(33) Statistical and Market-Related Data. The statistical and market-related data included in the Registration Statement, the General Disclosure Package or the Prospectus is based on or derived from sources that the Company believes to be reliable in all material respects.

(34) No Unlawful Payments. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that could result in a violation or a sanction for violation by such persons of the Foreign Corrupt Practices Act of 1977 or the U.K. Bribery Act 2010, each as may be amended, or similar law of any other relevant jurisdiction, or the rules or regulations thereunder; and the Company and its subsidiaries have instituted and maintain policies and procedures to ensure compliance therewith. No part of the proceeds of the offering will be used, directly or indirectly, in violation of the Foreign Corrupt Practices Act of 1977 or the U.K. Bribery Act 2010, each as may be amended, or similar law of any other relevant jurisdiction, or the rules or regulations thereunder.

(35) Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(36) No Conflicts with Sanctions Laws. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries (i) is, or is controlled or 50% or more owned by or is acting on behalf of, an individual or entity that is currently subject to any sanctions administered or enforced by the United States (including any administered or enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of State, or the Bureau of Industry and Security of the U.S. Department of Commerce), the United Nations Security Council, the European Union, the United Kingdom (including sanctions administered or enforced by Her Majesty’s Treasury) or other relevant sanctions authority (collectively, “Sanctions” and such persons, “Sanctioned Persons”), (ii) is located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions that broadly prohibit dealings with that country or territory (collectively, “Sanctioned Countries” and each, a “Sanctioned Country”) or (iii) will, directly or indirectly, use the proceeds of this offering, or lend,

contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other individual or entity in any manner that would result in a violation of any Sanctions by, or could result in the imposition of Sanctions against, any individual or entity (including any individual or entity participating in the offering, whether as underwriter, advisor, investor or otherwise). Except as has been disclosed to the Underwriters or is not material to the analysis under any Sanctions, neither the Company nor any of its subsidiaries has engaged in any dealings or transactions with or for the benefit of a Sanctioned Person, or with or in a Sanctioned Country, in the preceding 3 years, nor does the Company or any of its subsidiaries have any plans to increase its dealings or transactions with or for the benefit of Sanctioned Persons, or with or in Sanctioned Countries.

(37) Offering Materials. Without limitation to the provisions of Section 17 hereof, the Company has not distributed and will not distribute, directly or indirectly (other than through the Underwriters), any “written communication” (as defined Rule 405 under the 1933 Act) or other offering materials in connection with the offering or sale of the Securities, other than the Pre-Pricing Prospectus, the Prospectus, any amendment or supplements to any of the foregoing that are filed with the SEC and any Permitted Free Writing Prospectuses (as defined in Section 17).

(38) Brokers. The Company has not paid or agreed to pay to any person any compensation for soliciting another to purchase the Securities (except as contemplated in this Agreement).

(b) Certificates. Any certificate signed by any officer of the Company or any of its subsidiaries (whether signed on behalf of such officer, the Company or such subsidiary) and delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

## SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) The Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, the aggregate principal amount of Securities set forth opposite such Underwriter’s name in Exhibit A hereto plus any additional principal amount of Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, in each case at a price equal to 99% of the principal amount thereof.

(b) Payment. Payment of the purchase price for, and delivery of, the Securities shall be made at the offices of Latham & Watkins LLP, 811 Main Street, Suite 3700, Houston, Texas 77002, or at such other place as shall be agreed upon by the Representatives and the Company, at 9:00 A.M. (New York City time) on September 8, 2014 (unless postponed in accordance with the provisions of Section 10), or such other time not later than five business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called “Closing Date”).

Payment shall be made to the Company by wire transfer of immediately available funds to a single bank account designated by the Company against delivery to the Representatives for the respective accounts of the Underwriters of the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Securities which it has agreed to purchase. Wells Fargo, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Securities to be purchased by any Underwriter whose funds have not been received by the Closing Date, but such payment shall not relieve such Underwriter from its obligations hereunder.

(c) Delivery of Securities. The Company shall make one or more global certificates (collectively, the “Global Securities”) representing the Securities available for inspection by the Representatives not later than 1:00 p.m., New York City time, on the business day prior to the Closing Date and, on or prior to the Closing Date, the Company shall deliver the Global Securities to DTC or to the Trustee, acting as custodian for DTC, as applicable. Delivery of the Securities to the Underwriters on the Closing Date shall be made through the facilities of DTC unless the Representatives shall otherwise instruct.

(d) Appointment of QIU. The Company hereby confirms its engagement of RBC Capital Markets, LLC as, and RBC Capital Markets, LLC hereby confirms its agreement with the Company to render services as, a “qualified independent underwriter” within the meaning of FINRA Rule 5121 with respect to the offering and sale of the Securities and, in acting as such “qualified independent underwriter,” RBC Capital Markets, LLC agrees to undertake the legal responsibilities and liabilities of an underwriter under the 1933 Act, specifically including those inherent in Section 11 thereof. RBC Capital Markets, LLC, solely in its capacity as qualified independent underwriter and not otherwise, is referred to herein as the “QIU.”

**SECTION 3. Covenants of the Company.** The Company covenants with each Underwriter as follows:

(a) Compliance with Securities Regulations and Commission Requests. The Company, subject to Section 3(b), will comply with the requirements of Rule 430B and Rule 433 and will notify the Representatives immediately, and confirm the notice in writing from the Applicable Time through the Closing Time (or, if later, through the end of the period during which the Prospectus is required (or, but for the provisions of Rule 172, would be required) to be delivered by applicable law (whether to meet the requests of purchasers pursuant to Rule 173(d) or otherwise)), (i) when the Registration Statement or any post-effective amendment to the Registration Statement shall become effective, or when any preliminary prospectus, the Prospectus or any Issuer Free Writing Prospectus or any amendment or supplement to any of the foregoing shall have been filed, (ii) of the receipt of any comments from the Commission (and shall promptly furnish the Representatives with a copy of any comment letters and any transcript of oral comments, and shall furnish the Representatives with copies of any written responses thereto a reasonable amount of time prior to the proposed filing thereof with the Commission and will not file any such response to which the Representatives or counsel for the Underwriters shall reasonably object), (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to any



preliminary prospectus or the Prospectus or any Issuer Free Writing Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending the use of any preliminary prospectus, the Prospectus or any Issuer Free Writing Prospectus or any amendment or supplement to any of the foregoing or any notice from the Commission objecting to the use of the form of the Registration Statement or any post effective amendment thereto, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction or of the loss or suspension of any exemption from any such qualification, or of the initiation or threatening of any proceedings for any of such purposes, or of any examination pursuant to Section 8(e) of the 1933 Act concerning the Registration Statement and (v) of the initiation or threatening of any proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will make every reasonable effort to prevent the issuance of any stop order and the suspension or loss of any qualification of the Securities for offering or sale and any loss or suspension of any exemption from any such qualification, and if any such stop order is issued, or any such suspension or loss occurs, to obtain the lifting thereof at the earliest possible moment. The Company shall pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1)(i) of the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) of the 1993 Act Regulations, except to the extent such filing fees have been paid prior to the date hereof.

(b) Filing of Amendments. From the Applicable Time through the Closing Time (or, if later, through the end of the period during which the Prospectus is required (or, but for the provisions of Rule 172, would be required) to be delivered by applicable law (whether to meet the requests of purchasers pursuant to Rule 173(d) or otherwise)), the Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement, any Issuer Free Writing Prospectus or any amendment, supplement or revision to any preliminary prospectus, the Prospectus or any Issuer Free Writing Prospectus, whether pursuant to the 1933 Act or otherwise, and the Company will furnish the Representatives with copies of any such documents within a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or the 1934 Act Regulations within 48 hours prior to the Applicable Time; the Company will give the Representatives notice of its intention to make any such filing from the Applicable Time through the Closing Time (or, if later, through the end of the period during which the Prospectus is required (or, but for the provisions of Rule 172, would be required) to be delivered by applicable law (whether to meet the requests of purchasers pursuant to Rule 173(d) or otherwise)) and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object.

(c) Delivery of Registration Statements. If requested, the Company has furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, copies of the Registration Statement and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein or otherwise deemed to be a part thereof) and copies of all consents and certificates of experts. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) Delivery of Prospectuses. The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus and any amendments or supplements thereto as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when the Prospectus is required (or, but for the provisions of Rule 172, would be required) to be delivered by applicable law (whether to meet the request of purchasers pursuant to Rule 173(d) or otherwise), such number of copies of the Pre-Pricing Prospectus, the Prospectus and any Issuer Free Writing Prospectus and any amendments or supplements to any of the foregoing as such Underwriter may reasonably request. Each preliminary prospectus, the Prospectus, each Issuer Free Writing Prospectus and any amendments or supplements to any of the foregoing furnished to the Underwriters were and will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) Continued Compliance with Securities Laws. The Company will comply with the 1933 Act, the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations so as to permit the completion of the distribution of the Securities as contemplated by this Agreement, the General Disclosure Package and the Prospectus. If at any time when a prospectus is required (or, but for the provisions of Rule 172, would be required) by the applicable law to be delivered in connection with sales of the Securities (whether to meet the request of purchasers pursuant to Rule 173(d) or otherwise), any event shall occur or condition shall exist as a result of which it is necessary to amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus (or, in each case, any documents incorporated or deemed to be incorporated by reference therein) so that the Registration Statement, the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made or then prevailing, not misleading or if it is necessary to amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus (or, in each case, any documents incorporated or deemed to be incorporated by reference therein) in order to comply with the requirements of the 1933 Act, the 1933 Act Regulations, the 1934 Act or the 1934 Act Regulations, the Company will promptly notify the Representatives of such event or condition and of its intention to file such amendment or supplement and will promptly prepare and file with the Commission, subject to Section 3(b) hereof, such amendment or supplement as may be necessary to correct such untrue statement or omission or to comply with such

requirements, and, in the case of an amendment or post-effective amendment to the Registration Statement, the Company will use its commercially reasonable efforts to have such amendment declared or become effective as soon as practicable and the Company, if requested, will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. If at any time an Issuer Free Writing Prospectus conflicts with the information contained in the Registration Statement or if an event shall occur or condition shall exist as a result of which it is necessary to amend or supplement such Issuer Free Writing Prospectus so that it will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made or then prevailing, not misleading, or if it is necessary to amend or supplement such Issuer Free Writing Prospectus in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly notify the Representatives of such event or condition and of its intention to file such amendment or supplement and will promptly prepare and, if required by the 1933 Act or the 1933 Act Regulations, file with the Commission, subject to Section 3(b) hereof, such amendment or supplement as may be necessary to eliminate or correct such conflict, untrue statement or omission or to comply with such requirements, and the Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request.

(f) Blue Sky and Other Qualifications. The Company will furnish such information as may be required and otherwise cooperate with the Underwriters to qualify the Securities for offering and sale, or to obtain an exemption for the Securities to be offered and sold, under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may reasonably designate and to maintain such qualifications and exemptions in effect for so long as required for the distribution of the Securities (but in no event for a period of not less than one year from the date of this Agreement); provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Securities have been so qualified or exempt, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification or exemption, as the case may be, in effect for so long as required for the distribution of the Securities (but in no event for a period of not less than one year from the date of this Agreement).

(g) Rule 158. The Company will make generally available to its securityholders and the Underwriters as soon as practicable an earnings statement that satisfies the last paragraph of Section 11(a) of the 1933 Act and Rule 158 promulgated thereunder.

(h) Use of Proceeds. The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Pre-Pricing Prospectus and the Prospectus under "Use of Proceeds."

(i) Restriction on Sale of Securities. From and including the date of this Agreement through and including the 45th day after the date of this Agreement, the Company will not, without the prior written consent of Wells Fargo, directly or indirectly issue, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option or right to sell or otherwise transfer or dispose of any debt securities of or guaranteed by the Company that are similar to the Securities (other than the Securities issued under this Agreement) or any securities convertible into or exercisable or exchangeable for any debt securities of or guaranteed by the Company that are similar to the Securities.

(j) Reporting Requirements. The Company, during the period when the Prospectus is required (or, but for the provisions of Rule 172, would be required) by applicable law to be delivered (whether to meet the request of purchasers pursuant to Rule 173(d) or otherwise), will file all documents required to be filed with the Commission pursuant to the 1934 Act and the 1934 Act Regulations within the time periods required by the 1934 Act and the 1934 Act Regulations.

(k) Preparation of Prospectus. Immediately following the execution of this Agreement, the Company will, subject to Section 3(b) hereof, prepare the Prospectus, which shall contain the public offering price and terms of the Securities, the plan of distribution thereof and such other information as may be required by the 1933 Act or the 1933 Act Regulations or as the Representatives and the Company may deem appropriate, and will file or transmit for filing with the Commission, in accordance with the provisions of Rule 430B and in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), the Prospectus.

(l) DTC. The Company will use their best efforts to permit the Securities to be eligible for clearance and settlement through DTC.

(m) Pricing Term Sheet. The Company will prepare a pricing term sheet (the “Pricing Term Sheet”) reflecting the final terms of the Securities, in substantially the form attached hereto as Exhibit C and otherwise in form and substance satisfactory to the Representatives, and shall file such Pricing Term Sheet as an “issuer free writing prospectus” pursuant to Rule 433 prior to the close of business on the business day following the date hereof; provided that the Company shall furnish the Representatives with copies of any such Pricing Term Sheet a reasonable amount of time prior to such proposed filing and will not use or file any such document to which the Representatives or counsel to the Underwriters shall reasonably object.

#### SECTION 4. Payment of Expenses.

(a) Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement and each amendment thereto (in each case including exhibits) and any costs associated with electronic delivery of any of the foregoing, (ii) the printing (or reproduction) and delivery to the Underwriters of this Agreement, the Indenture and such other documents as may be required in connection with the offering, purchase, sale, issuance or

delivery of the Securities, (iii) the preparation, issuance and delivery of the certificates for the Securities and the issuance and delivery of the Securities to the Underwriters, including any issue or other transfer taxes and any stamp or other taxes or duties payable in connection with the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the qualification or exemption of the Securities under securities laws in accordance with the provisions of Section 3(f) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplements thereto, (vi) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, any Permitted Free Writing Prospectus and the Prospectus and any amendments or supplements to any of the foregoing and any costs associated with electronic delivery of any of the foregoing, (vii) the preparation, printing and delivery to the Underwriters of copies of the Blue Sky Survey and any supplements thereto and any costs associated with electronic delivery of any of the foregoing, (viii) the fees and expenses of the Trustee, including the fees and disbursements of counsel for the Trustee in connection with the Indenture and the Securities, (ix) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review, if any, by FINRA of the terms of the sale of the Securities, (x) all fees charged by any rating agencies for rating the Securities and all expenses and application fees incurred in connection with the approval of the Securities for clearance, settlement and book-entry transfer through DTC, (xi) the costs and expenses of the Company and any of its officers, directors, counsel or other representatives in connection with presentations or meetings undertaken in connection with the offering of the Securities, including, without limitation, expenses associated with the production of road show slides and graphics and the production and hosting of any electronic road shows, fees and expenses of any consultants engaged in connection with road show presentations, travel, lodging, transportation, and other expenses of the officers, directors, counsel and other representatives of the Company incurred in connection with any such presentations or meetings, and (xii) the reasonable fees and disbursements of counsel to the Underwriters in connection with matters relating to the QIU and its activities contemplated by this Agreement. Notwithstanding the foregoing, except as otherwise expressly provided in this Section 4(a) and Sections 4(b), 6 and 7 hereof, the Underwriters shall bear their own costs and expenses related to the issuance and sale by the Company of the Securities, including transfer taxes on resale of any Securities by them, and any advertising expenses in connection with any offers they make.

(b) Termination of Agreement. If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5 or Section 9 hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

SECTION 5. Conditions of Underwriters' Obligations. The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained in this Agreement, or in certificates signed by any officer of the Company or any subsidiary of the Company (whether signed on behalf of such officer, the Company or such subsidiary) delivered to the Representatives or counsel for the Underwriters, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) Effectiveness of Registration Statement. The Registration Statement shall have become effective, and no stop order suspending the effectiveness of the Registration Statement shall have been issued under the 1933 Act or proceedings therefor, pursuant to Rule 401 (g)(2) or Section 8A of the 1933 Act, initiated or, to the knowledge of the Company, threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representatives and the Commission shall not have notified the Company of any objection to the use of the form of the Registration Statement. The Prospectus shall have been filed with the Commission in the manner and within the time period required by Rule 424(b) (without reliance upon Rule 424(b)(8)) and each Issuer Free Writing Prospectus required to be filed with the Commission shall have been filed in the manner and within the time period required by Rule 433, and, prior to the Closing Date, the Company shall have provided evidence satisfactory to the Representatives of such timely filings.

(b) Opinion of Counsel for Company. At the Closing Date, the Representatives shall have received the favorable opinion, dated as of Closing Date, of Weil, Gotshal & Manges LLP, counsel for the Company (“Company Counsel”), in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such opinion for each of the other Underwriters, to the effect set forth in Exhibit E hereto and to such further effect as the Representatives may reasonably request.

(c) Opinion of Company’s General Counsel. At the Closing Date, the Representatives shall have received the favorable opinion, dated as of the Closing Date, of Dennis C. Cameron, Senior Vice President and General Counsel of the Company, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such opinion for each of the other Underwriters, to the effect set forth in Exhibit F hereto and to such further effect as the Representatives may reasonably request.

(d) Opinion of Counsel for Underwriters. At the Closing Date, the Representatives shall have received the favorable letter, dated as of Closing Date, of Latham & Watkins LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, with respect to the Securities to be sold by the Company pursuant to this Agreement, this Agreement, the Indenture, the Registration Statement, the General Disclosure Package and the Prospectus and any amendments or supplements thereto and such other matters as the Representatives may reasonably request.

(e) Officers’ Certificate. At the Closing Date, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package and the Prospectus (in each case exclusive of any amendments or supplements thereto subsequent to the date of this Agreement), any material adverse change or any development that would reasonably be expected to result in a prospective material adverse change, in the financial condition, earnings, business or operations of the Company and its subsidiaries (taken as a whole) from that set forth or contemplated in the General Disclosure Package and the Prospectus

(in each case exclusive of any amendments or supplements thereto subsequent to the date of this Agreement), and, at the Closing Date, the Representatives shall have received a certificate of the Company, signed by an executive officer of the Company, dated as of Closing Date (a) making representations and warranties with respect to the written comments received from the Commission and (b) to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties of the Company in this Agreement are true and correct at and as of the Closing Date with the same force and effect as though expressly made at and as of Closing Date, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to Closing Date under or pursuant to this Agreement, and (iv) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose, pursuant to Rule 401(g)(2) or Section 8A under the 1933 Act, have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission and the Commission has not notified the Company of any objection to the use of the form of the Registration Statement, and to the effect set forth in Section 5(j) below.

(f) Accountant's Comfort Letter. At the time of the execution of this Agreement, the Representatives shall have received from Ernst & Young LLP a letter, dated the date of this Agreement and in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information of the Company contained in the Registration Statement, the General Disclosure Package, any Issuer Free Writing Prospectuses (other than any electronic road show) and the Prospectus and any amendments or supplements to any of the foregoing.

(g) Bring-down Comfort Letter. At Closing Date, the Representatives shall have received from Ernst & Young LLP a letter, dated as of Closing Date and in form and substance satisfactory to the Representatives, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (f) of this Section, except that the specified date referred to shall be a date not more than three business days prior to Closing Date.

(h) Reserve Engineer's Letter. At the time of the execution of this Agreement, the Representatives shall have received from Netherland, Sewell & Associates, Inc. a letter, dated the date of this Agreement and in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters, covering certain matters relating to information about the reserves of the Company contained in the Registration Statement, the General Disclosure Package, any Issuer Free Writing Prospectuses (other than any electronic road show) and the Prospectus and any amendments or supplements to any of the foregoing.

(i) Bring-Down Reserve Engineer's Letter. At the Closing Date, the Representatives shall have received from Netherland, Sewell & Associates, Inc. a letter, dated as of the Closing Date and in form and substance satisfactory to the Representatives, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (h) of this Section.

(j) No Downgrade. There shall not have occurred, on or after the date of this Agreement, any downgrading in the rating of any debt securities of or guaranteed by the Company by any “nationally recognized statistical rating organization” (as defined by the Commission in Section 3(a)(62) of the 1934 Act) or any public announcement that any such organization has placed its rating on the Company or any such debt securities under surveillance or review or on a so-called “watch list” (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement by any such organization that the Company or any such debt securities has been placed on negative outlook.

(k) No Objection. Prior to the date of this Agreement, FINRA shall have confirmed in writing that it has no objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

(l) No Material Adverse Change. Since the date of the most recent financial statements included in the General Disclosure Package (exclusive of any amendment or supplement thereto) and the Prospectus (exclusive of any amendment or supplement thereto), there shall not have been any change, or any development that would reasonably be expected to result in a prospective change, in the financial condition, earnings, business or operations of the Company and its subsidiaries (taken as a whole) from that set forth in the Pre-Pricing Prospectus, the effect of which is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the General Disclosure Package and the Prospectus (exclusive of any amendment or supplement thereto).

(m) Additional Documents. At the Closing Date, counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, contained in this Agreement, or as the Representatives or counsel for the Underwriters may otherwise reasonably request; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated and in connection with the other transactions contemplated by this Agreement shall be satisfactory in form and substance to the Representatives.

(n) Termination of Agreement. If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the Representatives by notice to the Company at any time on or prior to Closing Date and such termination shall be without liability of any party to any other party except as provided in Section 4 hereof and except that Sections 1, 6, 7, 8, 11, 12, 13, 14, 15, 16, 18, 19 and 20 and hereof shall survive any such termination of this Agreement and remain in full force and effect.



## SECTION 6. Indemnification.

(a) Indemnification by the Company. (1) The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, and its and their officers, directors, employees, partners and members and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement to any of the foregoing), or in any “issuer information” (as defined in Rule 433) or “road show” (as defined in Rule 433) that does not constitute an Issuer Free Writing Prospectus, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with defending any such loss, liability, claim, damage or action;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use in the Registration Statement (or any amendment thereto), or in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or in any amendment or supplement to any of the foregoing), it being understood and agreed that the only such information furnished by the Underwriters as aforesaid consists of the information described as such in Section 6(b) hereof.

(2) In addition to and without limitation of the Company’s obligation to indemnify RBC Capital Markets, LLC in its capacity as an Underwriter, the Company also agrees to indemnify and hold harmless the QIU, its affiliates, and its and their officers, directors, employees, partners and members and each person, if any, who controls the QIU within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, based upon or arising out of or in connection with the QIU’s participation as a “qualified independent underwriter” within the meaning of FINRA Rule 5121 (“Rule 5121”) in connection with the offering of the Securities and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with defending any such loss, liability, claim, damage or action.

(b) Indemnification by the Underwriters. Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a)(1) of this Section 6, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), or in any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement to any of the foregoing), in reliance upon and in conformity with written information furnished to the Company by such Underwriter through the Representatives expressly for use therein. The Company hereby acknowledges and agrees that the information furnished to the Company by the Underwriters through the Representatives expressly for use in the Registration Statement (or any amendment thereto), or in any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement to any of the foregoing), consists exclusively of the following information appearing under the caption "Underwriting (Conflicts of Interest)" in the Pre-Pricing Prospectus and the Prospectus: (i) the information regarding stabilization, syndicate covering transactions and penalty bids appearing in the 6th, 7th and 8th paragraphs under such caption (but only insofar as such information concerns the Underwriters) and (ii) the information regarding market making by the Underwriters appearing in the 10th paragraph under such caption.

(c) Actions Against Parties; Notification. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for the Underwriters and the other indemnified parties referred to in Section 6(a)(1) above; the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for the QIU and the other indemnified

parties referred to in Section 6(a)(2) above; and the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for the Company, its directors, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act, in each case in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

**SECTION 7. Contribution.** If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Underwriters on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on such cover.

The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or by the Underwriters on the other hand and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that the QIU will not receive any additional benefits hereunder for serving as the QIU in connection with the offering and sale of the Securities.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each affiliate, officer, director, employee, partner and member of each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as such Underwriter, each affiliate, officer, director, employee, partner and member of the QIU and each person, if any, who controls the QIU within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the QIU, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the principal amount of Securities set forth opposite their respective names in Exhibit A hereto and not joint.

SECTION 8. Representations, Warranties and Agreements to Survive Delivery. All representations, warranties and agreements contained in this Agreement or in certificates signed by any officer of the Company or any of its subsidiaries (whether signed on behalf of such officer, the Company or such subsidiary) and delivered to the Representatives or counsel to the Underwriters, shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of any Underwriter, any officer, director, employee, partner, member or agent of any Underwriter or any person controlling any Underwriter, or by or on behalf of the Company, any officer, director or employee of the Company or any person controlling the Company, or by or on behalf of the QIU, any officer, director, employee, partner, member or agent of the QIU or any person controlling the QIU, and shall survive delivery of and payment for the Securities.

## SECTION 9. Termination of Agreement.

(a) Termination; General. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in the Company's shares shall have been suspended by the Commission or the NYSE or trading in securities generally on the NYSE shall have been suspended or limited or minimum prices shall have been established on such exchange, (ii) a banking moratorium shall have been declared either by federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering, sale or delivery of the Securities as contemplated by any Pre-Pricing Prospectus or the Prospectus (exclusive of any amendment or supplement thereto).

(b) Liabilities. If this Agreement is terminated pursuant to this Section 9, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and except that Sections 1, 6, 7, 8, 11, 12, 13, 14, 15, 16, 18, 19 and 20 hereof shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. (a) If one or more of the Underwriters shall fail at the Closing Date to purchase the aggregate principal amount of Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the aggregate principal amount of Defaulted Securities does not exceed 10% of the aggregate principal amount of Securities, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount of such Defaulted Securities in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters; or

(ii) if the number of Defaulted Securities exceeds 10% of the aggregate principal amount of Securities, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section 10 shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement, the Representatives shall have the right to postpone the Closing Date for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Notices. All notices and other communications hereunder shall be in writing, shall be effective only upon receipt and shall be mailed, delivered by hand or overnight courier, or transmitted by fax (with the receipt of any such fax to be confirmed by telephone). Notices to the Underwriters shall be directed to the Representatives at Wells Fargo Securities, LLC, 301 S. College St., 6<sup>th</sup> Floor, Charlotte, North Carolina 28288, Attention: Transaction Management, fax no. (704) 383-9165 (with such fax to be confirmed by telephone to (704) 715-0541); and notices to the Company shall be directed to it at WPX Energy, Inc., 3500 One Williams Center, Tulsa, Oklahoma 74172, Attention: Chief Financial Officer (Fax: (539) 573-0026), Attention: Treasurer (Fax: (539) 573-0026) and Attention: General Counsel (Fax: (539) 573-5608), with a copy mailed, delivered or telefaxed to Weil, Gotshal & Manges LLP, Attention: Corey R. Chivers (fax no.: (212) 310-8007 and confirmed at (212) 310-8893).

SECTION 12. Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters and the Company and the QIU and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and the QIU and their respective successors and the controlling persons and other indemnified parties referred to in Sections 6 and 7 and their successors, heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and the QIU and their respective successors, and said controlling persons and other indemnified parties and their successors, heirs and legal representatives, and for the benefit of no other person or entity. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 13. GOVERNING LAW AND TIME. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 14. Waiver of Jury Trial. The Company and the Underwriters hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

SECTION 15. Effect of Headings. The Section and Exhibit headings herein are for convenience only and shall not affect the construction hereof.

SECTION 16. Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:

“Applicable Time” means 3:20 p.m. (New York City time) on September 3, 2014 or such other time as agreed by the Company and the Representatives.

“Commission” means the Securities and Exchange Commission.

“DTC” means The Depository Trust Company.

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“EDGAR” means the Commission’s Electronic Data Gathering, Analysis and Retrieval System.

“Existing Credit Agreement” means the Credit Agreement dated as of June 3, 2011, by and among the Company, the lenders named therein, and Citibank, N.A., as Administrative Agent and Swingline Lender, as amended, supplemented or restated, if applicable, and in each case including any promissory notes, pledge agreements, security agreements, mortgages, guarantees and other instruments or agreements entered into by the Company or any of its subsidiaries in connection therewith or pursuant thereto, in each case as amended, supplemented or restated, if applicable.

“Existing Indenture” means the Indenture dated as of November 14, 2011 between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee, as amended or supplemented, if applicable, including any debt securities, pledge agreements, security agreements, mortgages, guarantees or other instruments or agreements entered into by the Company or any of its subsidiaries in connection therewith or pursuant thereto, in each case as amended or supplemented, if applicable.

“FINRA” means the Financial Industry Regulatory Authority Inc. or the National Association of Securities Dealers, Inc., or both, as the context shall require.

“GAAP” means generally accepted accounting principles.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Securities that (i) is required to be filed with the Commission by the Company, (ii) is a “road show” that is a “written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, and all free writing prospectuses that are listed in Exhibit D hereto, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“Issuer General Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Exhibit D hereto.

“Issuer Limited Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

“NYSE” means the New York Stock Exchange.

“Organizational Documents” means (a) in the case of a corporation, its charter and by-laws; (b) in the case of a limited or general partnership, its partnership certificate, certificate of formation or similar organizational document and its partnership agreement; (c) in the case of a limited liability company, its articles of organization, certificate of formation or similar organizational documents and its operating agreement, limited liability company agreement, membership agreement or other similar agreement; (d) in the case of a trust, its certificate of trust, certificate of formation or similar organizational document and its trust agreement or other similar agreement; and (e) in the case of any other entity, the organizational and governing documents of such entity.

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“PCAOB” means the Public Company Accounting Oversight Board (United States).

“preliminary prospectus” means any prospectus together with, if applicable, the accompanying prospectus supplement used in connection with the offering of the Securities that omitted the public offering price of the Securities or that was captioned “Subject to Completion,” together with the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act. The term “preliminary prospectus” includes, without limitation, the Pre-Pricing Prospectus.

“Registration Statement” means the Company’s registration statement on Form S-3 (Registration No. 333-198523) as amended (if applicable), including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act and the Rule 430B Information; provided that any Rule 430B Information shall be deemed part of the Registration Statement only from and after the time specified pursuant to Rule 430B.

“Rule 163,” “Rule 164,” “Rule 172,” “Rule 173,” “Rule 401,” “Rule 405,” “Rule 424(b)” “Rule 430B” and “Rule 433” refer to such rules under the 1933 Act.

“Rule 430B Information” means the information included in any preliminary prospectus or the Prospectus or any amendment or supplement to any of the foregoing that was omitted from the Registration Statement at the time it first became effective but is deemed to be part of and included in the Registration Statement pursuant to Rule 430B.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder or implementing the provisions thereof.

“Transaction Documents” means this Agreement, the Indenture and the Securities, collectively.

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

“1933 Act Regulations” means the rules and regulations of the Commission under the 1933 Act.

“1934 Act” means the Securities Exchange Act of 1934, as amended.

“1934 Act Regulations” means the rules and regulations of the Commission under the 1934 Act.

“1939 Act” means the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder.

“1940 Act” means the Investment Company Act of 1940, as amended.



All references in this Agreement to the Registration Statement, any preliminary prospectus, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the version thereof filed with the Commission pursuant to EDGAR and all versions thereof delivered (physically or electronically) to the Representatives or the Underwriters.

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” in the Registration Statement, any preliminary prospectus or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is incorporated by reference in or otherwise deemed by 1933 Act Regulations to be a part of or included in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the 1934 Act which is incorporated by reference in or otherwise deemed by 1933 Act Regulations to be a part of or included in the Registration Statement, such preliminary prospectus or the Prospectus, as the case may be.

**SECTION 17. Permitted Free Writing Prospectuses.** The Company represents, warrants and agrees that it has not made and, unless it obtains the prior written consent of the Representatives, it will not make, and each Underwriter, severally and not jointly, represents, warrants and agrees that it has not made and, unless it obtains the prior written consent of the Company and the Representatives, it will not make, any offer relating to the Securities that constitutes or would constitute an “issuer free writing prospectus” (as defined in Rule 433) or that otherwise constitutes or would constitute a “free writing prospectus” (as defined in Rule 405) or portion thereof required, in the case of any Underwriters, to be filed with the Commission or, in the case of the Company, whether or not required to be filed with the Commission; provided that the prior written consent of the Company and the Representatives shall be deemed to have been given in respect of the Issuer General Use Free Writing Prospectuses, if any, listed on Exhibit D hereto and to any electronic road show in the form previously provided by the Company to and approved by the Representatives. Any such free writing prospectus consented to or deemed to have been consented to as aforesaid is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents, warrants and agrees that it has treated and will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

**SECTION 18. Absence of Fiduciary Relationship.** The Company acknowledges and agrees that:

(a) each of the Underwriters is acting solely as an underwriter in connection with the sale of the Securities and no fiduciary, advisory or agency relationship between the Company, on the one hand, and any of the Underwriters, on the other hand, has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not any of the Underwriters has advised or is advising the Company on other matters;

(b) the public offering price of the Securities and the price to be paid by the Underwriters for the Securities set forth in this Agreement were established by the Company following discussions and arms-length negotiations with the Representatives;

(c) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;

(d) it is aware that the Underwriters and their respective affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that none of the Underwriters has any obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and

(e) it waives, to the fullest extent permitted by law, any claims it may have against any of the Underwriters for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that none of the Underwriters shall have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company or any stockholders, employees or creditors of Company.

**SECTION 19. Research Analyst Independence.** The Company acknowledges that the Underwriters' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriters' research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their respective investment banking divisions. The Company hereby waives and releases, to the fullest extent permitted by applicable law, any claims that the Company may have against the Underwriters with respect to any conflict of interest related to the issuance and sale by the Company of the Securities that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such Underwriters' investment banking divisions. The Company acknowledges that each of the Underwriters is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

**SECTION 20. Consent to Jurisdiction.** The parties hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the terms of this Agreement and the transactions contemplated herein, and the parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or federal court. The parties hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. To the extent that either party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to its obligations hereunder, each waives such immunity to the extent permitted by applicable law.

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SECTION 21. Patriot Act. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the underwriters to properly identify their respective clients.

**[Signature Page Follows]**

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If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Underwriters and the Company in accordance with its terms.

Very truly yours,

WPX ENERGY, INC.

By: /s/ J. Kevin Vann

Name: J. Kevin Vann

Title: Chief Financial Officer and Senior Vice  
President

*Signature Page to Underwriting Agreement*

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CONFIRMED AND ACCEPTED, as of the date first  
above written:

WELLS FARGO SECURITIES, LLC  
CITIGROUP GLOBAL MARKETS INC.  
RBS SECURITIES INC.

By: WELLS FARGO SECURITIES, LLC

By /s/ Jeff Gore  
Authorized Signatory

By CITIGROUP GLOBAL MARKETS INC.

By /s/ Brian D. Bednarski  
Authorized Signatory

By RBS SECURITIES INC.

By /s/ Mark Frenzel  
Authorized Signatory

For themselves and as Representative of the Underwriters named in Exhibit A hereto.

*Signature Page to Underwriting Agreement*

EXHIBIT A

| <u>Name of Underwriter</u>                            | <u>Principal<br/>Amount of<br/>Securities</u> |
|---|---|
| Wells Fargo Securities, LLC                           | \$ 91,700,000                                 |
| Citigroup Global Markets Inc.                         | 91,700,000                                    |
| RBS Securities Inc.                                   | 91,700,000                                    |
| Barclays Capital Inc.                                 | 41,700,000                                    |
| Merrill Lynch, Pierce, Fenner & Smith<br>Incorporated | 41,700,000                                    |
| J.P. Morgan Securities LLC                            | 41,700,000                                    |
| Credit Agricole Securities (USA) Inc.                 | 16,200,000                                    |
| Scotia Capital (USA) Inc.                             | 16,200,000                                    |
| RBC Capital Markets, LLC                              | 10,000,000                                    |
| BBVA Securities Inc.                                  | 8,200,000                                     |
| BOSC, Inc.  | 8,200,000                                     |
| Credit Suisse Securities (USA) LLC                    | 8,200,000                                     |
| Mitsubishi UFJ Securities (USA), Inc.                 | 8,200,000                                     |
| Mizuho Securities USA Inc.                            | 8,200,000                                     |
| SMBC Nikko Securities America, Inc.                   | 8,200,000                                     |
| U.S. Bancorp Investments, Inc.                        | 8,200,000                                     |
| Total   | <u>\$500,000,000</u>                          |

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EXHIBIT B

SIGNIFICANT SUBSIDIARIES OF THE COMPANY

| <u>Name</u>                    | <u>Jurisdiction of</u> |                           | <u>Type of Entity</u> |
|--------------------------------|------------------------|---------------------------|-----------------------|
|                                | <u>Organization</u>    |                           |                       |
| WPX Energy Rocky Mountain, LLC | Delaware               | Limited Liability Company |                       |
| WPX Energy Williston, LLC      | Delaware               | Limited Liability Company |                       |
| WPX Energy Appalachia, LLC     | Delaware               | Limited Liability Company |                       |
| WPX Energy Keystone, LLC       | Delaware               | Limited Liability Company |                       |
|                                | B-1                    |                           |                       |

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EXHIBIT C

FORM OF PRICING TERM SHEET

Filed Pursuant to Rule 433  
Registration No. 333-198523  
September 3, 2014

**WPX ENERGY, INC.  
Pricing Term Sheet  
\$500,000,000 5.25% Senior Notes due 2024**

|   |  |
|---|--|
| Issuer:   | WPX Energy, Inc.   |
| Security Type:                                  | Senior Unsecured Notes   |
| Pricing Date:                                   | September 3, 2014  |
| Settlement Date:                                | September 8, 2014  |
| Maturity Date:                                  | September 15, 2024   |
| Interest Payment Dates:                         | March 15 and September 15, beginning March 15, 2015  |
| Interest Record Dates:                          | March 1 and September 1  |
| Principal Amount:                               | \$500,000,000  |
| Public Offering Price:                          | 100%   |
| Underwriting Discounts and Commissions:         | 1.00%, \$5,000,000   |
| Proceeds, Before Expenses, to WPX Energy, Inc.: | \$495,000,000  |
| Yield to Maturity:                              | 5.25%  |
| Coupon:   | 5.25%  |
| Optional Redemption:                            | At any time prior to June 15, 2024, make-whole call at the Adjusted Treasury Rate + 50 bps plus accrued and unpaid interest.<br><br>At any time on or after June 15, 2024, 100% of the principal amount to be redeemed plus accrued and unpaid interest. |
| CUSIP / ISIN:                                   | 98212B AE3 / US98212BAE39  |
| Joint Book-Running Managers:                    | Wells Fargo Securities, LLC<br>Citigroup Global Markets Inc.<br>RBS Securities Inc.<br>Barclays Capital Inc.<br>Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>J.P. Morgan Securities LLC   |
| Joint Lead Managers:                            | Credit Agricole Securities (USA) Inc.<br>Scotia Capital (USA) Inc.<br>RBC Capital Markets, LLC   |



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Co-Managers:

BBVA Securities Inc.  
BOSC, Inc.  
Credit Suisse Securities (USA) LLC  
Mitsubishi UFJ Securities (USA) Inc.  
Mizuho Securities USA Inc.  
SMBC Nikko Securities America, Inc.  
U.S. Bancorp Investments, Inc.

The issuer has filed a registration statement (including a preliminary prospectus supplement and a prospectus) and a prospectus supplement with the U.S. Securities and Exchange Commission (SEC) for the offering to which this communication relates. Before you invest, you should read the prospectus supplement for this offering, the issuer's prospectus in that registration statement and any other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by searching the SEC online data base (EDGAR) on the SEC web site at <http://www.sec.gov>. Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus supplement and prospectus if you request it by calling Wells Fargo Securities, LLC toll-free at 1-800-326-5897 or emailing [cmClientsupport@wellsfargo.com](mailto:cmClientsupport@wellsfargo.com).

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EXHIBIT D

ISSUER GENERAL USE FREE WRITING PROSPECTUSES

1. Pricing Term Sheet containing the terms of the Securities, substantially in the form of Exhibit C hereto.

D-1

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EXHIBIT E

FORM OF OPINION OF COMPANY COUNSEL

E-1

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EXHIBIT F

FORM OF OPINION OF GENERAL COUNSEL OF THE COMPANY

F-1

**WPX ENERGY, INC.**

**AND**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

**as Trustee**

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**INDENTURE**

**Dated as of September 8, 2014**

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## CROSS-REFERENCE TABLE

Reconciliation and tie showing the location in the Indenture dated as of September 8, 2014 of the provisions inserted pursuant to Sections 310 to 318(a), inclusive, of the Trust Indenture Act of 1939, as amended. This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

| <u>Trust Indenture Act of 1939 Section</u> | <u>Indenture Section</u> |
|--|--------------------------|
| 310 (a)(1)                                 | 7.09                     |
| (a)(2)                                     | 7.09                     |
| (a)(5)                                     | 7.09                     |
| (b)  | 7.08 and 7.10            |
| 312 (a)                                    | 5.01                     |
| 313 (a)                                    | 5.03                     |
| (c)  | 5.03                     |
| 314 (a)                                    | 5.02                     |
| (c)(1)                                     | 14.06                    |
| (c)(2)                                     | 14.06                    |
| (e)  | 14.06                    |
| 315 (a)                                    | 7.01                     |
| (b)  | 6.14                     |
| (c)  | 7.01                     |
| (d)  | 7.01                     |
| (e)  | 6.15                     |
| 316 (a)(1)                                 | 6.01 and 6.13            |
| (b)  | 6.07                     |
| (c)  | 8.02                     |
| 317 (a)                                    | 6.02                     |
| (b)  | 4.04(a)                  |
| 318 (a)                                    | 14.09                    |

---

## TABLE OF CONTENTS

---

|  | P<br>AGE |
|--|----------|
| ARTICLE 1  |          |
| D EFINITIONS   |          |
| Section 1.01. <i>Definitions; Rules of Construction</i>                              | 1        |
| ARTICLE 2  |          |
| D ESCRIPTION , E XECUTION , R EGISTRATION AND E XCHANGE OF S ECURITIES               |          |
| Section 2.01. <i>Forms</i>   | 12       |
| Section 2.02. <i>Amount Unlimited; Issuable in Series</i>                            | 13       |
| Section 2.03. <i>Authentication</i>  | 15       |
| Section 2.04. <i>Date and Denomination of Securities</i>                             | 17       |
| Section 2.05. <i>Execution of Securities</i>   | 17       |
| Section 2.06. <i>Exchange and Registration of Transfer of Securities</i>             | 18       |
| Section 2.07. <i>Global Securities</i>   | 19       |
| Section 2.08. <i>Mutilated, Destroyed, Lost or Stolen Securities</i>                 | 20       |
| Section 2.09. <i>Temporary Securities</i>  | 21       |
| Section 2.10. <i>Cancellation of Securities Paid, etc</i>                            | 22       |
| Section 2.11. <i>Computation of Interest</i>   | 22       |
| Section 2.12. <i>Form of Legend for Global Securities</i>                            | 22       |
| Section 2.13. <i>CUSIP Numbers</i>   | 23       |
| ARTICLE 3  |          |
| R EDEMPTION OF S ECURITIES ; S INKING F UNDS   |          |
| Section 3.01. <i>Applicability of Article</i>  | 23       |
| Section 3.02. <i>Notice of Redemption; Selection of Securities</i>                   | 23       |
| Section 3.03. <i>Payment of Securities Called for Redemption</i>                     | 24       |
| Section 3.04. <i>Satisfaction of Mandatory Sinking Fund Payments with Securities</i> | 25       |
| Section 3.05. <i>Redemption of Securities for Sinking Fund</i>                       | 25       |
| Section 3.06. <i>Repayment at the Option of the Holder</i>                           | 27       |
| ARTICLE 4  |          |
| P ARTICULAR C OVENANTS OF THE C OMPANY   |          |
| Section 4.01. <i>Payment of Principal, Premium and Interest</i>                      | 27       |
| Section 4.02. <i>Offices for Notices and Payments, etc</i>                           | 27       |
| Section 4.03. <i>Appointment to Fill Vacancies in Trustee's Office</i>               | 28       |
| Section 4.04. <i>Provision as to Paying Agent</i>                                    | 28       |
| Section 4.05. <i>Statement as to Compliance</i>                                      | 29       |
| Section 4.06. <i>Additional Amounts</i>  | 29       |
| Section 4.07. <i>Limitation on Liens</i>   | 30       |

---

ARTICLE 5  
SECURITYHOLDER LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

|               |                               |    |
|---------------|-------------------------------|----|
| Section 5.01. | <i>Securityholder Lists</i>   | 30 |
| Section 5.02. | <i>Reports by the Company</i> | 31 |
| Section 5.03. | <i>Reports by the Trustee</i> | 31 |

ARTICLE 6  
REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

|               |  |    |
|---------------|--|----|
| Section 6.01. | <i>Events of Default</i>   | 31 |
| Section 6.02. | <i>Acceleration of Maturity; Rescission and Annulment</i>  | 32 |
| Section 6.03. | <i>Collection of Indebtedness and Suits for Enforcement by Trustee</i>                               | 33 |
| Section 6.04. | <i>Proceedings by Trustee</i>  | 34 |
| Section 6.05. | <i>Trustee May Enforce Claims without Possession of Securities; Trustee May File Proofs of Claim</i> | 35 |
| Section 6.06. | <i>Application of Moneys Collected by Trustee</i>  | 35 |
| Section 6.07. | <i>Limitations on Suits</i>  | 36 |
| Section 6.08. | <i>Unconditional Right of Holders to Receive Principal and any Premium and Interest</i>              | 37 |
| Section 6.09. | <i>Restoration of Rights and Remedies</i>  | 37 |
| Section 6.10. | <i>Rights and Remedies Cumulative</i>  | 38 |
| Section 6.11. | <i>Delay or Omission Not Waiver</i>  | 38 |
| Section 6.12. | <i>Control by Securityholders</i>  | 38 |
| Section 6.13. | <i>Waiver of Past or Existing Defaults</i>   | 38 |
| Section 6.14. | <i>Notice of Defaults</i>  | 39 |
| Section 6.15. | <i>Waiver of Stay or Extension Laws</i>  | 39 |
| Section 6.16. | <i>Undertaking to Pay for Costs</i>  | 39 |

ARTICLE 7  
CONCERNING THE TRUSTEE

|               |  |    |
|---------------|--|----|
| Section 7.01. | <i>Duties and Responsibilities of Trustee</i>                  | 40 |
| Section 7.02. | <i>Reliance on Documents, Opinions, etc</i>                    | 41 |
| Section 7.03. | <i>No Responsibility for Recitals, etc</i>                     | 43 |
| Section 7.04. | <i>Ownership of Securities</i>                                 | 43 |
| Section 7.05. | <i>Moneys to be Held in Trust</i>                              | 43 |
| Section 7.06. | <i>Compensation and Expenses of Trustee</i>                    | 43 |
| Section 7.07. | <i>Officer's Certificate as Evidence</i>                       | 44 |
| Section 7.08. | <i>Disqualification: Conflicting Interests for the Trustee</i> | 44 |
| Section 7.09. | <i>Eligibility of Trustee</i>                                  | 44 |
| Section 7.10. | <i>Resignation or Removal of Trustee</i>                       | 45 |
| Section 7.11. | <i>Acceptance by Successor Trustee</i>                         | 46 |
| Section 7.12. | <i>Succession by Merger, etc</i>                               | 47 |
| Section 7.13. | <i>Appointment of Authenticating Agent</i>                     | 47 |



---

ARTICLE 8  
C ONCERNING T HE S ECURITYHOLDERS

|               |   |    |
|---------------|---|----|
| Section 8.01. | <i>Action of Securityholders</i>                    | 49 |
| Section 8.02. | <i>Proof of Execution by Securityholders</i>        | 49 |
| Section 8.03. | <i>Who Are Deemed Absolute Owners</i>               | 50 |
| Section 8.04. | <i>Company-Owned Securities Disregarded</i>         | 50 |
| Section 8.05. | <i>Revocation of Consents; Future Holders Bound</i> | 51 |

ARTICLE 9  
S ECURITYHOLDERS ' M EETINGS

|               |   |    |
|---------------|---|----|
| Section 9.01. | <i>Purposes of Meetings</i>                           | 51 |
| Section 9.02. | <i>Call of Meetings by Trustee</i>                    | 51 |
| Section 9.03. | <i>Call of Meetings by Company or Securityholders</i> | 51 |
| Section 9.04. | <i>Qualifications for Voting</i>                      | 52 |
| Section 9.05. | <i>Quorum; Adjourned Meetings</i>                     | 52 |
| Section 9.06. | <i>Regulations</i>                                    | 53 |
| Section 9.07. | <i>Voting</i>   | 53 |
| Section 9.08. | <i>No Delay of Rights by Meeting</i>                  | 54 |

ARTICLE 10  
S UPPLEMENTAL I NDENTURES

|                |   |    |
|----------------|---|----|
| Section 10.01. | <i>Supplemental Indentures without Consent of Securityholders</i>               | 54 |
| Section 10.02. | <i>Supplemental Indentures with Consent of Securityholders</i>                  | 56 |
| Section 10.03. | <i>Compliance with Trust Indenture Act; Effect of Supplemental Indentures</i>   | 57 |
| Section 10.04. | <i>Notation on Securities</i>   | 58 |
| Section 10.05. | <i>Evidence of Compliance of Supplemental Indenture to be Furnished Trustee</i> | 58 |

ARTICLE 11  
C ONSOLIDATION , M ERGER AND S ALES

|                |   |    |
|----------------|---|----|
| Section 11.01. | <i>Company May Consolidate, etc., Only on Certain Terms</i> | 58 |
| Section 11.02. | <i>Successor Person to be Substituted</i>                   | 59 |

ARTICLE 12  
S ATISFACTION AND D ISCHARGE OF I NDENTURE

|                |   |    |
|----------------|---|----|
| Section 12.01. | <i>Satisfaction and Discharge of Indenture</i>  | 59 |
| Section 12.02. | <i>Legal Defeasance and Covenant Defeasance</i> | 60 |
| Section 12.03. | <i>Application of Trust Money</i>               | 63 |
| Section 12.04. | <i>Paying Agent to Repay Moneys Held</i>        | 64 |
| Section 12.05. | <i>Return of Unclaimed Moneys</i>               | 64 |
| Section 12.06. | <i>Reinstatement</i>                            | 64 |
| Section 12.07. | <i>Qualifying Trustee</i>                       | 64 |

---

ARTICLE 13  
I MMUNITY OF I NCORPORATORS , S TOCKHOLDERS , O FFICERS AND D IRECTORS

|                |   |    |
|----------------|---|----|
| Section 13.01. | <i>Limitation on Individual Liability</i> | 65 |
|----------------|---|----|

ARTICLE 14  
M ISCELLANEOUS P ROVISIONS

|                |  |    |
|----------------|--|----|
| Section 14.01. | <i>Provisions Binding on Company's Successors</i>            | 65 |
| Section 14.02. | <i>Official Acts by Successor Person</i>                     | 65 |
| Section 14.03. | <i>Addresses for Notices, Notice to Holders, Waiver</i>      | 65 |
| Section 14.04. | <i>Governing Law</i>   | 66 |
| Section 14.05. | <i>Wavier of Trial by Jury</i>                               | 66 |
| Section 14.06. | <i>Evidence of Compliance with Conditions Precedent</i>      | 67 |
| Section 14.07. | <i>Legal Holidays</i>  | 67 |
| Section 14.08. | <i>Securities in a Specified Currency other than Dollars</i> | 67 |
| Section 14.09. | <i>Trust Indenture Act to Control</i>                        | 68 |
| Section 14.10. | <i>Table of Contents, Headings, etc</i>                      | 68 |
| Section 14.11. | <i>Execution in Counterparts</i>                             | 68 |
| Section 14.12. | <i>Separability; Benefits</i>                                | 68 |
| Section 14.13. | <i>Certain Tax Information</i>                               | 68 |

THIS INDENTURE, dated as of September 8, 2014, is between WPX ENERGY, INC., a Delaware corporation (the “ **Company** ”), and The Bank of New York Mellon Trust Company, N.A., a national banking association (the “ **Trustee** ”).

## RECITALS

WHEREAS, the Company has duly authorized the issue from time to time of its unsecured debentures, notes or other evidences of indebtedness to be issued in one or more series (each, a “ **Security** ,” and collectively the “ **Securities** ”) up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture and to provide, among other things, for the authentication, delivery and administration thereof, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid indenture and agreement according to its terms have been done;

NOW, THEREFORE, in consideration of the premises and the purchases of the Securities by the holders thereof, the Company and the Trustee mutually covenant and agree, for the equal and proportionate benefit of the respective holders from time to time of the Securities of each series thereof, as follows:

## ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions; Rules of Construction* . The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture shall have the respective meanings specified in this Section 1.01, and include the plural as well as the singular. All other terms used in this Indenture which are defined in the Trust Indenture Act, or which are by reference therein defined in the Securities Act (except as herein otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of this Indenture as originally executed. The words “ **herein** ,” “ **hereof** ,” and “ **hereunder** ” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the terms “generally accepted accounting principles” or “GAAP” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted on the date of this Indenture. The word “or” is always used inclusively (for example, the phrase “A or B” shall mean “A or B or both,” not “either A or B but not both”). Provisions apply to successive events and transactions. References to agreements and other instruments include subsequent amendments thereto and restatements thereof. “ **Including** ” shall mean “including without limitation”. All references to articles and sections are to this Indenture. Any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” this Indenture or any particular provision thereof if such transaction or event is not expressly prohibited by this Indenture or such provision, as the case may be.

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Certain terms used principally in certain Articles hereof are defined in those Articles.

“ **Additional Securities** ” shall have the meaning specified in Section 2.02.

“ **Affiliate** ” of any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” as used with respect to any specified Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; and the terms “controlling,” “controlled by” “under common control” have the meanings correlative to the foregoing.

“ **Agent Members** ” shall have the meaning specified in Section 2.07(g).

“ **Authenticating Agent** ” shall mean any Person authorized by the Trustee pursuant to Section 7.13 to act on behalf of the Trustee to authenticate Securities.

“ **Applicable Law** ” shall have the meaning specified in Section 14.13.

“ **Beneficial Owner** ” shall mean a Person who is the beneficial owner of a beneficial interest in a Global Security as reflected on the books of the Depositary or on the books of a Person maintaining an account with such Depositary (directly as a Depositary participant or as an indirect participant, in each case in accordance with the rules of such Depositary).

“ **Board of Directors** ” shall mean:

- (a) with respect to any corporation, the board of directors of the corporation or any authorized committee thereof;
  - (b) with respect to a limited liability company, the managing member or managing members or board of directors, as applicable, of such limited liability company or any authorized committee thereof;
  - (c) with respect to any partnership, the board of directors of the general partner of the partnership or any authorized committee thereof;
- and
- (d) with respect to any other Person, the board or committee of such Person serving a similar function.

“ **Board Resolution** ” shall mean a copy of one or more resolutions (which may be standing resolutions), certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors of the Company or any Committee of such Board or specified officers and employees of the Company to which the powers of such Board have been lawfully delegated, to be in full force and effect on the date of such certification, and delivered to the Trustee.

“ **Business Day** ” shall mean each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York or another Place of Payment are authorized or required by law, regulation or executive order to close.

“ **Business Entity** ” shall have the meaning assigned to it in the definition of “Non-Recourse Subsidiary” in this Section 1.01.

“ **Capital Stock** ” shall mean:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“ **Commission** ” shall mean the U.S. Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act or any successor agency.

“ **Company** ” shall mean WPX ENERGY, INC., a Delaware corporation, until any successor corporation or limited liability company shall have become such pursuant to the provisions of Article 11, and thereafter “ **Company** ” shall mean such successor, except as otherwise provided in Section 11.02.

“ **Company Request** ” and “ **Company Order** ” shall mean, respectively, a written request or order, as the case may be, signed in the name of the Company by an Officer of the Company, and delivered to the Trustee.

“ **Consolidated Net Tangible Assets** ” shall mean at any date of determination, the total amount of assets of the Company and its Subsidiaries (less applicable reserves and other properly deductible items but including investments in non-consolidated persons) after deducting therefrom:

(a) all current liabilities (excluding (i) any current liabilities that by their terms are extendable or renewable at the option of the obligor thereon to a time more than 12 months after the time as of which the amount thereof is being computed, and (ii) current maturities of long-term debt); and

(b) the value of all goodwill, trade names, trademarks, patents and other like intangible assets, all as set forth, or on a pro forma basis would be set forth, on the consolidated balance sheet of the Company for the Company's most recently completed fiscal quarter, prepared in accordance with GAAP.

“ **Depository** ” shall mean, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as depository for such Securities as contemplated by Section 2.07.

“ **Dollars** ” or “ **\$** ” shall mean a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States of America.

“ **Domestic Subsidiary** ” shall mean any Subsidiary of the Company that is incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

“ **Event of Default** ” shall have the meaning specified in Section 6.01.

“ **Exchange Act** ” shall mean the Securities Exchange Act of 1934, as amended.

“ **GAAP** ” shall mean generally accepted accounting principles in the United States, as such are in effect on the date of this Indenture.

“ **Global Security** ” shall mean a Security that evidences all or part of the Securities of any series and bears the legend set forth in Section 2.12 (or such other legend as may be specified for such Securities as contemplated by Section 2.02).

“ **Government Obligations** ” shall mean securities which are (a) direct obligations of the United States of America where the payment or payments thereunder are supported by the full faith and credit of the United States or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America where the timely payment or payments thereunder are unconditionally guaranteed as a full faith and credit obligation by the United States of America, and which, in the case of (a) or (b), are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of or other amount with respect to any such Government Obligation held by such custodian for the account of the holder of a depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of or other amount with respect to the Government Obligation evidenced by such depository receipt.

“ **Indebtedness** ” shall mean, with respect to any specified Person, any obligation created or assumed by such Person, whether or not contingent, for the repayment of money borrowed from others or any guarantee thereof.

**“ Indenture ”** shall mean this instrument as originally executed or as it may be amended or supplemented from time to time as herein provided, and shall include the form and terms of particular series of Securities established as contemplated hereunder.

**“ Independent Registered Public Accounting Firm ”** shall mean a firm of accountants that, with respect to the Company and any other obligor under any series of Securities, is an independent registered public accounting firm within the meaning of the Securities Act and the rules and regulations promulgated by the Commission thereunder, who may be the independent registered public accounting firm regularly retained by the Company or who may be another independent registered public accounting firm. Such firm shall be entitled to rely upon any Opinion of Counsel as to the interpretation of any legal matters relating to this Indenture or certificates required to be provided hereunder.

**“ interest ,”** when used with respect to a non-interest bearing Security, shall mean interest payable after the principal thereof has become due and payable whether at maturity, by declaration of acceleration, by call for redemption, pursuant to a sinking fund, or otherwise.

**“ International Subsidiary ”** shall mean each Subsidiary of the Company other than a Domestic Subsidiary.

**“ Joint Venture ”** shall mean any Person that is not a direct or indirect Subsidiary of the Company in which the Company or any of its Subsidiaries owns any Capital Stock.

**“ Lien ”** shall mean any mortgage, pledge, lien, security interest or other similar encumbrance.

**“ mandatory sinking fund payment ”** shall have the meaning specified in Section 3.01.

**“ Market Exchange Rate ”** shall have the meaning set forth in Section 14.08.

**“ Maturity ”** shall mean, with respect to any Security, the date on which the principal of such Security or an installment of interest becomes due and payable as provided in or pursuant to this Indenture, whether at the Stated Maturity or by declaration of acceleration, notice of redemption or repurchase, notice of option to elect repayment or otherwise, and includes a Redemption Date.

**“ Non-Recourse Indebtedness ”** shall mean any Indebtedness incurred by any Joint Venture or Non-Recourse Subsidiary which does not provide for recourse against the Company or any of its Subsidiaries (other than a Non-Recourse Subsidiary) or any property or assets of the Company or any of its Subsidiaries (other than the Capital Stock or the properties or assets of a Joint Venture or Non-Recourse Subsidiary).

**“ Non-Recourse Subsidiary ”** shall mean any Subsidiary of the Company (a) whose principal purpose is to incur Non-Recourse Indebtedness and/or construct, lease, own or operate the assets financed thereby, or to become a direct or indirect partner, member or other equity participant or owner in a partnership, limited partnership, limited

liability partnership, corporation (including a business trust), limited liability company, unlimited liability company, joint stock company, trust, unincorporated association or joint venture created for such purpose (collectively, a “**Business Entity**”), (b) who is not an obligor or otherwise bound with respect to any Indebtedness other than Non-Recourse Indebtedness, (c) substantially all the assets of which Subsidiary or Business Entity are limited to (i) those assets being financed (or to be financed), or the operation of which is being financed (or to be financed), in whole or in part by Non-Recourse Indebtedness, or (ii) Capital Stock in, or Indebtedness or other obligations of, one or more other Non-Recourse Subsidiaries or Business Entities, and (d) any Subsidiary of a Non-Recourse Subsidiary; provided that such Subsidiary shall be considered to be a Non-Recourse Subsidiary only to the extent that and for so long as each of the above requirements are met.

“**Officer**” shall mean, unless otherwise specified by a provision of this Indenture or the Trust Indenture Act, as applicable, the Chairman of the Board of Directors, a Vice Chairman, the Chief Executive Officer, the President, any Vice President (without regard to qualifiers such as “Executive” or “Senior”), the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary of such Person, or other Person authorized by resolution of the Board of Directors of such Person.

“**Officer’s Certificate**” shall mean a certificate signed by an Officer of the Company, which, if applicable, complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

“**Opinion of Counsel**” shall mean a written opinion of counsel, who may be an employee of or counsel for the Company or an affiliate thereof or other counsel that, if applicable, complies with the requirements of Section 314(e) of the Trust Indenture Act and shall include the statements provided for in Section 14.06 if and to the extent required by the provisions of the Trust Indenture Act or Section 14.06, as applicable.

“**optional sinking fund payment**” shall have the meaning specified in Section 3.01.

“**Original Issue Discount Security**” shall mean any Security which 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.

“**Outstanding**” shall mean, when used with respect to Securities, subject to the provisions of Section 8.04, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

(a) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation including Securities tendered and exchanged for other securities of the Company, or any reductions in the interest in a Global Security effected by the Trustee in accordance with the provisions of this Indenture;



(b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company), or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own paying agent), in each case pursuant to Section 12.01; *provided* that if such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been mailed (or otherwise delivered in accordance with the applicable procedures of the Depository) as in Article 3 provided, or provision satisfactory to the Trustee shall have been made for mailing (or such other delivery) such notice;

(c) Securities as to which defeasance has been effected pursuant to Section 12.02; and

(d) Securities in lieu of or in substitution for which other Securities shall have been authenticated and delivered, or which shall have been paid, pursuant to the terms of Section 2.08, unless proof satisfactory to the Trustee is presented that any such Securities are held by persons in whose hands any of such Securities is a valid, binding and legal obligation of the Company.

In determining whether the holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof pursuant to Section 6.02.

“ **Overdue Rate** ” shall mean, with respect to each series of Securities, the rate of interest designated as such in the Board Resolution or the supplemental indenture, as the case may be, relating to such series as contemplated by Section 2.02, or if no such rate is specified, the rate at which such Securities shall bear interest.

“ **Permitted International Debt** ” shall mean Indebtedness of any International Subsidiary for which neither the Company nor any Domestic Subsidiary, directly or indirectly, provides any guarantee or other credit support and which is secured, if at all, only by pledges of or liens on assets (i) held by an International Subsidiary on the date of this Indenture, (ii) acquired by an International Subsidiary from a Person not constituting an Affiliate or (iii) acquired by an International Subsidiary from the Company, any Domestic Subsidiary or other Affiliate on terms that, in the good faith judgment of the Company’s Board of Directors, are no less favorable to the Company or the relevant Domestic Subsidiary or other Affiliate than those that would have been obtained in a comparable transaction by the Company or such Domestic Subsidiary or other Affiliate with an unrelated Person or, if in the good faith judgment of the Company’s Board of Directors, no comparable transaction is available with which to compare such transaction, such transaction is otherwise fair to the Company or the relevant Domestic Subsidiary or other Affiliate from a financial point of view.

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“ **Permitted Liens** ” shall mean:

(a) any Lien existing on any property at the time of the acquisition thereof and not created in contemplation of such acquisition by the Company or any of its Subsidiaries, whether or not assumed by the Company or any of its Subsidiaries;

(b) any Lien existing on any property of a Subsidiary of the Company at the time it becomes a Subsidiary of the Company and not created in contemplation thereof and any Lien existing on any property of any Person at the time such Person is merged or liquidated into or consolidated with the Company or any Subsidiary thereof and not created in contemplation thereof;

(c) purchase money and analogous Liens incurred in connection with the acquisition (including through merger, consolidation or other reorganization), development, construction, improvement, repair or replacement of property (including such Liens securing Indebtedness incurred within 12 months of the date on which such property was acquired, developed, constructed, improved, repaired or replaced); provided that all such Liens attach only to the property acquired, developed, constructed, improved, repaired or replaced and the principal amount of the Indebtedness secured by such Lien shall not exceed the gross cost of the property;

(d) Liens on accounts receivable and related proceeds thereof arising in connection with a receivables financing and any Lien held by the purchaser of receivables derived from property or assets sold by the Company or any Subsidiary thereof and securing such receivables resulting from the exercise of any rights arising out of defaults on such receivables;

(e) leases constituting Liens existing on the date of this Indenture or thereafter existing and any renewals or extensions thereof;

(f) any Lien securing industrial development, pollution control or similar revenue bonds;

(g) Liens existing on the date hereof;

(h) Liens in favor of the Company or any of its Subsidiaries;

(i) Liens securing Indebtedness incurred to refund, extend, refinance or otherwise replace Indebtedness (“ **Refinanced Indebtedness** ”) secured by a Lien permitted to be incurred under this Indenture; *provided* that the principal amount of such Refinanced Indebtedness does not exceed the principal amount of Indebtedness refinanced (plus the amount of penalties, premiums, fees, accrued interest and reasonable expenses incurred therewith) at the time of refinancing;

(j) Liens on any assets or properties, or pledges of the Capital Stock, of (a) any Joint Venture owned by the Company or any of its Subsidiaries or (b) any Non-Recourse Subsidiary, in each case only to the extent securing Non-Recourse Indebtedness of such Joint Venture or Non-Recourse Subsidiary;

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(k) Liens on the products and proceeds (including insurance, condemnation and eminent domain proceeds) of and accessions to, and contract or other rights (including rights under insurance policies and product warranties) derivative of or relating to, property permitted by this Indenture to be subject to Liens but subject to the same restrictions and limitations set forth in this Indenture as to Liens on such property (including the requirement that such Liens on products, proceeds, accessions, and rights secure only obligations that such property is permitted to secure);

(l) any Liens securing Indebtedness neither assumed nor guaranteed by the Company or a Subsidiary of the Company nor on which the Company or a Subsidiary of the Company customarily pays interest, existing upon real estate or rights in or relating to real estate (including rights-of-way and easements) acquired by the Company or such Subsidiary, which mortgage Liens do not materially impair the use of such property for the purposes for which it is held by the Company or such Subsidiary;

(m) any Lien existing or hereafter created on any office equipment, data processing equipment (including computer and computer peripheral equipment), or transportation equipment (including motor vehicles, aircraft, and marine vessels);

(n) undetermined Liens and charges incidental to construction or maintenance;

(o) any Lien created or assumed by the Company or a Subsidiary of the Company on oil, gas, coal, or other mineral or timber property owned or leased by the Company or a Subsidiary of the Company to secure loans to the Company or a Subsidiary of the Company, for the purpose of developing such properties;

(p) any Lien created by the Company or a Subsidiary of the Company on any contract (or any rights thereunder or proceeds therefrom) providing for advances by the Company or such Subsidiary to finance oil, natural gas, hydrocarbon or other mineral exploration or development, which Lien is created to secure Indebtedness incurred to finance such advances; and

(q) any Lien granted in connection with a cash collateralization or similar arrangement to secure obligations of the Company or of any of the Company's Subsidiaries to issuing banks in connection with letters of credits issued at the request of the Company or any Subsidiary of the Company;

(r) Liens on cash deposits in the nature of a right of setoff, banker's lien, counterclaim or netting of cash amounts owed arising in the ordinary course of business on deposit accounts;

(s) Liens arising under or from farm-out or farm-in agreements, carried working interest arrangements or agreements, joint operating agreements, unitization and pooling arrangements and agreements, royalties, overriding royalties, contracts for sales of oil, gas or other mineral interests, area of mutual interest agreements, division orders, joint ventures, partnerships and similar agreements relating to the exploration or development of, or production from, oil and gas properties incurred in the ordinary course of business;

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(t) Liens occurring in, arising from, or associated with Specified Escrow Arrangements;

(u) Liens securing Permitted International Debt;

(v) Liens not otherwise permitted so long as the aggregate outstanding principal amount of the Indebtedness secured thereby does not exceed \$10,000,000 at any time; and

(w) Liens in respect of production payments, forward sales and similar arrangements arising in connection with Indebtedness that is payable solely out of the proceeds of the sale of oil, natural gas, hydrocarbon or other minerals produced from the properties to which such Lien attaches.

Each of the foregoing paragraphs (a) through (w) shall also be deemed to permit (i) appropriate Uniform Commercial Code and other similar filings to perfect the Liens permitted by such paragraph and (ii) Liens on the products and proceeds (including insurance, condemnation and eminent domain proceeds) of and accessions to, and contract or other rights (including rights under insurance policies and product warranties) derivative of or relating to, the property permitted to be encumbered under such paragraph, but subject to the same restrictions and limitations herein set forth as to Liens on such property (including the requirement that such Liens on products, proceeds, accessions and rights secure only the specified obligations, and in the amount, that such property is permitted to secure).

“ **Person** ” or “ **person** ” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or any agency or political subdivision thereof.

“ **Place of Payment** ” shall mean, with respect to any Security, the place or places where the principal of, or any premium or interest on, such Security are payable as provided in or pursuant to this Indenture.

“ **Principal Office of the Trustee** ,” or other similar term, shall mean the designated office of the Trustee at which any particular time its corporate trust business shall be administered.

“ **record date** ” shall have the meaning set forth in Section 2.04.

“ **Redemption Date** ” shall mean, with respect to any Security or portion thereof to be redeemed, each date fixed for such redemption by or pursuant to this Indenture or such Security.

“ **Refinanced Indebtedness** ” shall have the meaning assigned to it in the definition of “Permitted Liens” in this Section 1.01.

**“Responsible Officer”**, when used with respect to the Trustee, shall mean any vice president, any assistant vice president, any assistant treasurer, any trust officer or assistant trust officer, any associate or senior associate or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also shall mean, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

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

**“Security”** and **“Securities”** shall have the meanings set forth in the recitals to this Indenture.

**“Security Register”** shall have the meaning set forth in Section 2.06.

**“Security Registrar”** shall have the meaning set forth in Section 2.06.

**“Securityholder”**, **“holder of Securities”**, or other similar terms, shall mean any person in whose name at the time a particular Security is registered on the books of the Company kept for that purpose in accordance with the terms hereof.

**“series”** shall mean a series of Securities established under this Indenture.

**“Specified Currency”** shall mean the currency in which a Security is denominated, which may include Dollars, any foreign currency or any composite of two or more currencies.

**“Specified Escrow Arrangements”** shall mean cash deposits at one or more financial institutions for the purpose of funding any potential shortfall in the daily net cash position of the Company or any of its Subsidiaries.

**“Stated Maturity”** shall mean the date established by or pursuant to this Indenture or the applicable series of Securities as the fixed date on which the principal of the Securities of such series or any installment of interest is due and payable.

**“Subsidiary”** shall mean, with respect to any specified Person:

(a) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than 50% of the total voting power of Voting Stock is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(b) any partnership (whether general or limited) or limited liability company (i) the sole general partner or member of which is such Person or a Subsidiary of such Person, or (ii) if there is more than a single general partner or member, either (x) the only managing general partners or managing members of which are such Person or one or

more Subsidiaries of such Person (or any combination thereof) or (y) such Person owns or controls, directly or indirectly, a majority of the outstanding general partner interests, member interests or other Voting Stock of such partnership or limited liability company, respectively.

“ **Trust Indenture Act** ” shall mean the Trust Indenture Act of 1939, as amended, and any reference herein to the Trust Indenture Act or a particular provision thereof shall mean such Act or provision, as the case may be, as amended or replaced from time to time or as supplemented from time to time by rules or regulations adopted by the Commission under or in furtherance of the purposes of such Act or provision, as the case may be.

“ **Trustee** ” shall mean the corporation or association named as Trustee in this Indenture and, subject to the provisions of Article 7, shall also include its successors and assigns as Trustee hereunder. If pursuant to the provisions of this Indenture there shall be at any time more than one Trustee hereunder, the term “Trustee” as used with respect to the Securities of any series shall mean the Trustee with respect to the Securities of such series.

“ **Uniform Commercial Code** ” shall mean the New York Uniform Commercial Code as in effect from time to time.

“ **Voting Stock** ” of any Person as of any date shall mean the Capital Stock of such Person that is at the time entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors of such Person.

## ARTICLE 2

### DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF SECURITIES

Section 2.01. *Forms* . (a) The Securities of each series shall be in substantially such form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such legends or endorsements placed thereon as the officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities of such series may be listed, or to conform to usage.

(b) The Board Resolution or one or more indentures supplemental hereto establishing the form and terms of the Securities of any series pursuant to Sections 2.01 and 2.02, respectively, of this Indenture, may provide for issuance of Global Securities. If Securities of a series are so authorized to be issued as Global Securities, any such Global Security may provide that it shall represent that aggregate amount of Securities from time to time endorsed thereon, and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced to reflect

exchanges. Any endorsement of a Global Security to reflect the amount, or any increase or decrease in the amount or changes in the rights of holders of Securities represented thereby, shall be made in such manner and by such person or persons as shall be specified therein.

(c) The Trustee's Certificate of Authentication on all Securities shall be in substantially the following form:

This is one of the Securities of the series designated therein described in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Section 2.02. *Amount Unlimited; Issuable in Series* . The aggregate principal amount of Securities which 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 or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(a) the title of the Securities of such series (which shall distinguish the Securities of such series from all other Securities);

(b) any limit upon the aggregate principal amount of the Securities of such series which 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 such series pursuant to Sections 2.06, 2.08, 2.09, 3.03, 3.06 or 10.04);

(c) the date or dates on which the principal and premium, if any, of the Securities of such series is payable;

(d) the rate or rates, or the method of determination thereof, at which the Securities of such series shall bear interest, if any, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable and, if other than as set forth in Section 2.04, the record dates for the determination of holders to whom interest is payable;

(e) in addition to the office or agency of the Company in the Borough of Manhattan, The City of New York required to be maintained pursuant to Section 4.02, any other Place of Payment;

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- (f) the Specified Currency of the Securities of such series;
  - (g) the currency or currencies in which payments on the Securities of such series are payable, if other than the Specified Currency;
  - (h) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of such series may be redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise;
  - (i) the obligation, if any, of the Company to redeem, purchase or repay Securities of such series pursuant to any sinking fund or analogous provisions or at the option of a holder thereof and the price at which or process by which and the period or periods within which and the terms and conditions upon which Securities of such series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;
  - (j) if other than minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, the denominations in which Securities of such series shall be issuable;
  - (k) if other than the principal amount thereof, the portion of the principal amount of Securities of such series which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01;
  - (l) if the principal of or interest on the Securities of such series are to be payable, at the election of the Company or a holder thereof, in a coin or currency other than the Specified Currency, the period or periods within which, and the terms and conditions upon which, such election may be made;
  - (m) if the amount of payments of principal of and interest on the Securities of such series may be determined with reference to an index based on a coin or currency other than the Specified Currency, the manner in which such amounts shall be determined;
  - (n) any addition to, or modification of, any Events of Default set forth in Article 6 with respect to the Securities of such series, and whether any such additional or modified Events of Default shall be subject to covenant defeasance under Section 12.02;
  - (o) if other than the rate of interest stated in the title of the Securities of such series, the applicable Overdue Rate;
  - (p) in the case of any series of non-interest bearing Securities, the applicable dates for purposes of Section 5.01(a);
  - (q) if other than The Bank of New York Mellon Trust Company, N.A. is to act as Trustee for the Securities of such series, the name and Principal Office of such Trustee;



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(r) if either or both of Section 12.02(b) or Section 12.02(c) do not apply to any Securities of such series;

(s) if applicable, that any Securities of such series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the name of the respective Depositaries for such Global Securities, the form of any legend or legends which shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 2.12 and any circumstances in addition to or in lieu of those set forth in clause (b) of Section 2.06 in which any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof;

(t) any addition to, or modification of, any covenants set forth in Article 4 with respect to the Securities of such series, and whether any such additional or modified covenant shall be subject to covenant defeasance under Section 12.02(c); and

(u) any other terms of such series.

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 such Board Resolution or in any such indenture supplemental hereto.

Notwithstanding Section 2.02(b) herein and unless otherwise expressly provided with respect to a series of Securities, the Company may, from time to time, without the consent of the Securityholders of Securities of a particular series, reopen such series of Securities and issue additional Securities (“ **Additional Securities** ”) of such series having the same ranking and the same interest rate, maturity and other terms as the Securities of such series, except for the public offering price, the issue date and, if applicable, the initial interest payment date and initial interest accrual date. Any such Additional Securities, together with the initial Securities of such series, shall constitute a single series of Securities under this Indenture; *provided* that if the Additional Securities are not fungible for U.S. federal income tax purposes with the initial Securities of such series, the Additional Securities shall be issued under a separate CUSIP number. No Additional Securities may be issued if an Event of Default has occurred and is continuing with respect to the series of Securities of which such Additional Securities would be a part.

Section 2.03. *Authentication* . 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. Except as otherwise provided in this Article 2, the Trustee shall thereupon authenticate and deliver said Securities to or upon the receipt of a Company Order. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive and (subject to Section 7.01) shall be fully protected in relying upon:

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(a) a copy of any Board Resolution relating thereto and, if applicable, an appropriate record of any action taken pursuant to such resolution;

(b) an executed supplemental indenture, if any, relating thereto;

(c) an Officer's Certificate prepared in accordance with Section 14.06 which shall also state to the best knowledge of the signers of such Certificate that no Event of Default with respect to any series of Securities shall have occurred and be continuing; and

(d) an Opinion of Counsel prepared in accordance with Section 14.06 to the effect

(i) that the form of such Securities has been established by or pursuant to a Board Resolution or by a supplemental indenture as permitted by Section 2.01 in conformity with the provisions of this Indenture;

(ii) that the terms of such Securities have been established by or pursuant to a Board Resolution or by a supplemental indenture as permitted by Section 2.02 in conformity with the provisions of this Indenture;

(iii) that the Company has all requisite corporate power and authority to execute and deliver such Securities;

(iv) that the execution and delivery of such Securities by the Company have been duly authorized by all necessary corporate action on the part of the Company;

(v) that such Securities have been duly and validly executed, and when duly authenticated by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute the legal, valid and binding obligations of the Company, enforceable against it in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); and

(vi) that the execution and delivery by the Company of such Securities and the performance by the Company of its obligations thereunder will not conflict with, constitute a default under or violate any of the terms, conditions or provisions of the organizational certificate or bylaws of the Company.

The Trustee shall have the right to decline to authenticate and deliver or cause to be authenticated and delivered any Securities under this Section 2.03 if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee, or a trust committee of directors or trustees and/or vice presidents shall determine that such action would expose the Trustee to personal liability to existing Securityholders.

Section 2.04. *Date and Denomination of Securities* . The Securities of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated by Section 2.02. In the absence of any such specification with respect to the Securities of any series, the Securities of such series shall be issuable in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof. Securities of each series shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company executing the same may determine with the approval of the Trustee.

Every Security shall be dated the date of its authentication.

The person in whose name any Security of a particular series is registered at the close of business on any record date (as hereinafter defined) with respect to any interest payment date for such series shall be entitled to receive the interest payable on such interest payment date notwithstanding the cancellation of such Security upon any registration of transfer or exchange subsequent to the record date and prior to such interest payment date; *provided, however* , that if and to the extent that the Company shall default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the persons in whose names Outstanding Securities of such series are registered on a subsequent record date established by notice given by mail by or on behalf of the Company to the holders of such Securities not less than 15 days preceding such subsequent record date, such record date to be not less than five days preceding the date of payment of such defaulted interest. Except as otherwise specified as contemplated by Section 2.02 for Securities of a particular series, the term “ **record date** ” as used in this Section 2.04 with respect to any regular interest payment date, shall mean, the first day of the calendar month of such interest payment date if such interest payment date is the fifteenth day of such calendar month, and shall mean the fifteenth day of the calendar month preceding such interest payment date if such interest payment date is the first day of a calendar month, whether or not such day shall be a Business Day.

Interest on the Securities may at the option of the Company be paid by check mailed to the persons entitled thereto at their respective addresses as such appear on the Security Register.

Section 2.05. *Execution of Securities* . The Securities shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its President, its Chairman of the Board, its Chief Financial Officer, its Treasurer or Assistant Treasurer, or its Secretary or Assistant Secretary. Only such Securities as shall bear thereon a certificate of authentication substantially in the form herein recited, executed by the Trustee by the manual signature of an authorized officer, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Securities shall cease to be such officer before the Securities so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Securities nevertheless may be authenticated and delivered or disposed of as though the person who signed such Securities had not ceased to be such officer of the Company; and any Security may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

Section 2.06. *Exchange and Registration of Transfer of Securities* . Securities of any series may be exchanged for a like aggregate principal amount of Securities of the same series of other authorized denominations. Securities to be exchanged shall be surrendered, at the option of the holders thereof, either at the office or agency designated and maintained by the Company for such purpose in the Borough of Manhattan, The City of New York, in accordance with the provisions of Section 4.02 or at any of such other offices or agencies as may be designated and maintained by the Company for such purpose in accordance with the provisions of Section 4.02, and the Company shall execute and register and the Trustee shall authenticate and deliver in exchange therefor the Security or Securities which the Securityholder making the exchange shall be entitled to receive. Each person designated by the Company pursuant to the provisions of Section 4.02 as a person authorized to register and register transfer of the Securities is sometimes herein referred to as a “ **Security Registrar** .”

The Company shall keep, at each such office or agency, a register for each series of Securities issued hereunder (the registers of all Security Registrars, collectively, the “ **Security Register** ”) in which, subject to such reasonable regulations as it may prescribe, the Company shall register Securities and shall register the transfer of Securities as in this Article 2 provided. The Security Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the Security Registrar shall be open for inspection by the Trustee and any Security Registrar other than the Trustee. Upon due presentment for registration or registration of transfer of any Security of any series at any designated office or agency, the Company shall execute and register and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Security or Securities of the same series for an equal aggregate principal amount. Registration or registration of transfer of any Security by any Security Registrar in the Security Register maintained by such Security Registrar, and delivery of such Security, duly authenticated, shall be deemed to complete the registration or registration of transfer of such Security. Notwithstanding anything herein to the contrary, there shall only be one Security Register for each series of Securities.

No person shall at any time be designated as or act as a Security Registrar unless such person is at such time empowered under applicable law to act as such under and to the extent required by applicable law and regulations.

All Securities presented for registration of transfer or for exchange, redemption or payment shall (if so required by the Company or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Company and the Trustee duly executed by, the applicable Securityholder or his attorney duly authorized in writing.

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No service charge shall be made for any exchange or registration of transfer of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith.

The Company shall not be required to exchange or register a transfer of (a) any Securities of any series for the period of 15 days next preceding the selection of Securities of that series to be redeemed and thereafter until the date of the mailing (or other delivery in accordance with the applicable procedures of the Depositary) of a notice of redemption of Securities of that series selected for redemption, or (b) any Securities selected, called or being called for redemption in whole or in part except, in the case of any Security to be redeemed in part, the portion thereof not so to be redeemed.

Section 2.07. *Global Securities* . The provisions of this Section 2.07 shall apply only to Global Securities.

(a) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Security or a nominee thereof and delivered to such Depositary or nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes under this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security evidencing the Securities of any series may be exchanged in whole or in part for Securities of such series registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary has notified the Company that it is unwilling or unable to continue its services as Depositary for such Global Security and no successor Depositary has been appointed within 90 days after such notice, or (ii) such Depositary ceases to be a “clearing agency” registered under Section 17A of the Exchange Act when the Depositary is required to be so registered to act as the Depositary and no successor Depositary has been appointed within 90 days of the Company becoming aware of such failure to be so registered, (iii) the Company determines at any time that the Securities of such series shall no longer be represented by Global Securities, in which case the Company shall inform such Depositary of such determination and participants in such Depositary may elect to withdraw their beneficial interests in the Securities from such Depositary, or (iv) any event shall have occurred and be continuing which, after notice or lapse of time, or both, would constitute an Event of Default with respect to such series of Securities, and such exchange is requested by or on behalf of the Depositary in accordance with customary procedures following the request of a Beneficial Owner seeking to exercise or enforce its rights under the Securities of such series.

(c) Subject to Section 2.07(b), any exchange of a Global Security for other Securities may be made in whole or in part, and all Securities issued in exchange for a Global Security or any portion thereof shall be registered in such names as the Depositary for such Global Security shall direct.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

(e) Subject to the provisions of Section 2.07(g), the registered Securityholder may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Securityholder is entitled to take under this Indenture or the Securities.

(f) In the event of the occurrence of any of the events specified in Section 2.07(b), (i) the Company shall promptly make available to the Trustee a reasonable supply of such certificated Securities in definitive, fully registered form, without interest coupons, and (ii) the Trustee shall promptly exchange each beneficial interest in the applicable Global Security for one or more certificated Securities in definitive, fully registered form, without interest coupons, in authorized denominations having an equal aggregate principal amount registered in the name of the owner of such beneficial interest, as identified to the Trustee by the Depositary, and thereupon such Global Security will be deemed canceled.

(g) Neither any members of, or participants in, the Depositary (collectively, the “**Agent Members**”) nor any other Persons on whose behalf Agent Members may act, shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company or the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

Section 2.08. *Mutilated, Destroyed, Lost or Stolen Securities* . In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company (in the case of a mutilated Security) shall, and the Company may in its discretion (in the case of a destroyed, lost or stolen Security), execute and, upon the written request or authorization of any officer of the Company, the Trustee shall authenticate and deliver, a new Security of the same series, bearing a number not contemporaneously Outstanding, in exchange and substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substituted Security shall furnish to the Company and to the Trustee

such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and the ownership thereof.

Upon the issuance of any substituted Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Security which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substituted Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless and, in case of destruction, loss or theft, evidence satisfactory to the Company and the Trustee of the destruction, loss or theft of such Security and the ownership thereof.

Every substituted Security issued pursuant to the provisions of this Section 2.08 by virtue of the fact that any Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of the same series duly issued hereunder. All Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities and shall preclude (to the extent lawful) any and all other rights or remedies with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

**Section 2.09. *Temporary Securities*** . Pending the preparation of definitive Securities of any series the Company may execute and the Trustee shall authenticate and deliver temporary Securities (printed, lithographed or typewritten). Temporary Securities shall be issuable in any authorized denomination and substantially in the form of the definitive Securities in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every such temporary Security shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Securities in lieu of which they are issued. Without unreasonable delay, the Company shall execute and deliver to the Trustee definitive Securities of such series, and thereupon any or all temporary Securities of such series may be surrendered in exchange therefor, at the option of the holders thereof, either at the office or agency to be designated and maintained by the Company for such purpose in the Borough of Manhattan, The City of New York, in accordance with the provisions of Section 4.02 or at any of such other offices or agencies as may be designated and maintained by the Company for such purpose in accordance with the provisions of Section 4.02, and the Trustee shall authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of the same series. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series authenticated and delivered hereunder.

Section 2.10. *Cancellation of Securities Paid, etc* . All Securities surrendered for the purpose of payment, redemption, repayment, exchange or registration of transfer or for credit against any sinking fund shall, if surrendered to the Company, any Security Registrar, any paying agent or any other agent of the Company or of the Trustee, be delivered to the Trustee and promptly cancelled by it, or, if surrendered to the Trustee, shall be promptly cancelled by it, and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee may dispose of cancelled Securities in accordance with its customary procedures and deliver a certificate of such disposition to the Company or, at the written request of the Company, shall deliver cancelled Securities to the Company. If the Company shall acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

Section 2.11. *Computation of Interest* . Except as otherwise specified as contemplated by Section 2.02 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 2.12. *Form of Legend for Global Securities* . Unless otherwise specified as contemplated by Section 2.02 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form (or such other form as a securities exchange or Depositary may request or require):

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY DTC TO A NOMINEE OF DTC, OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.



Section 2.13. *CUSIP Numbers*. The Company in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Securityholders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the Securities or as contained in any notice of a redemption, and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any changes in the “CUSIP” numbers of any series of Securities.

### ARTICLE 3 REDEMPTION OF SECURITIES ; SINKING FUNDS

Section 3.01. *Applicability of Article* . The provisions of this Article 3 shall be applicable, as the case may be, (a) to the Securities of any series which are redeemable before their maturity and (b) to any sinking fund for the retirement of Securities of any series, in either case except as otherwise specified as contemplated by Section 2.02 for Securities of such series.

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** .”

Section 3.02. *Notice of Redemption; Selection of Securities* . In case the Company shall desire to exercise any right to redeem all, or, as the case may be, any part of, the Securities of any series in accordance with their terms, it shall fix a date for redemption and shall mail (or otherwise deliver in accordance with the applicable procedures of the Depositary) a notice of such redemption at least 30 and not more than 60 days prior to the date fixed for redemption to the holders of Securities of such series so to be redeemed as a whole or in part at their last addresses as the same appear on the Security Register and to the Trustee, except as the supplemental indenture or resolutions adopted by the Board of Directors to establish the terms of any series of Securities may otherwise provide. Such mailing shall be by first class mail. The notice if mailed (or otherwise delivered) in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail (or otherwise deliver in accordance with the applicable procedures of the Depositary) or any defect in the notice to the holder of any Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security of such series.

Each such notice of redemption shall specify the date fixed for redemption, the redemption price at which the Securities of such series are to be redeemed (or if not then ascertainable, the manner of calculation thereof), the place or places of payment, that payment will be made upon presentation and surrender of such Securities, that any interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date any interest thereon or on the portions thereof to be redeemed will cease to accrue. Where the redemption price is not ascertainable at the time the notice of redemption is given as aforesaid, the Company shall notify the Trustee of said redemption price promptly after the calculation thereof. If less than all the Securities of a series are to be redeemed the notice of redemption shall specify the number or numbers of the Securities of that series to be redeemed. In case any Security of a series is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of that series in principal amount equal to the unredeemed portion thereof will be issued. 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 request and with the notice information provided to the Trustee, by the Trustee in the name and at the expense of the Company, and shall be irrevocable; *provided* that, in the latter case, the Company shall give the Trustee at least ten days' prior notice of the date of the giving of the notice (unless a shorter notice shall be satisfactory to the Trustee).

On or prior to the Redemption Date specified in the notice of redemption given as provided in this Section 3.02, the Company shall deposit with the Trustee or with one or more paying agents (or, if the Company is acting as its own paying agent, shall segregate and hold in trust as provided in Section 4.04) an amount of money sufficient to redeem on such Redemption Date specified in the notice of redemption given as provided in this Section 3.02 all the Securities or portions thereof so called for redemption, together with accrued interest to the date fixed for redemption. The Company shall give the Trustee notice not less than 35 days (or such shorter period as may be acceptable to the Trustee) prior to the Redemption Date specified in the notice of redemption given as provided in this Section 3.02 as to the aggregate principal amount of Securities of such series to be redeemed, and the Trustee shall select or cause to be selected, in such manner as in its sole discretion it shall deem appropriate and fair, the Securities of that series or portions thereof to be redeemed. Securities of a series may be redeemed in part only in multiples of the smallest authorized denomination of that series.

Beneficial interests in Securities represented by Global Securities shall be selected for redemption by the Depositary therefor in accordance with its standard procedures. In the case of any redemption of Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or (b) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities, the Company shall furnish the Trustee with an Officer's Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

Section 3.03. *Payment of Securities Called for Redemption* . If notice of redemption has been given as provided in Section 3.02 or Section 3.05, the Securities or portions of Securities of the series with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable redemption price, together with any interest accrued to, but excluding, the date

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fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Securities or portions of such Securities, together with any interest accrued on said date) any interest on the Securities of such series or portions of Securities of such series so called for redemption shall cease to accrue. On presentation and surrender of such Securities at a Place of Payment in said notice specified, the said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with any interest accrued thereon to, but excluding, the date fixed for redemption; *provided, however*, that any regularly scheduled installment of interest becoming due on or prior to the date fixed for redemption shall be payable to holders of such Securities registered as such on the relevant record date according to their terms.

Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the holder thereof, at the expense of the Company, a new Security or Securities of the same series, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented.

Section 3.04. *Satisfaction of Mandatory Sinking Fund Payments with Securities*. In lieu of making all or any part of any mandatory sinking fund payment with respect to any Securities of a series in cash, the Company may at its option (a) deliver to the Trustee Securities of that series theretofore purchased or otherwise acquired by the Company, or (b) receive credit for the principal amount of Securities of that series which 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; *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 mandatory sinking fund payment shall be reduced accordingly.

Section 3.05. *Redemption of Securities for Sinking Fund*. Not less than 60 days prior to each sinking fund payment date for any series of Securities, the Company shall deliver to the Trustee a certificate signed by the Treasurer or any Assistant Treasurer 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 (which cash may be deposited with the Trustee or with one or more paying agents, or if the Company is acting as its own paying agent segregated and held in trust as provided in Section 4.04) and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 3.04 (which Securities, if not theretofore delivered, will accompany such certificate) and whether the Company intends to exercise its right to make a permitted optional sinking fund payment with respect to such series. Such certificate shall also state that no Event of Default has occurred and is continuing with respect to such series. Such certificate shall be irrevocable and upon its delivery the Company shall be obligated to make the cash payment or payments therein referred to, if any, on or before the next succeeding sinking fund payment date. In the case of the failure of the Company to deliver such

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certificate (or to deliver the Securities specified in this paragraph), the sinking fund payment due on the next succeeding sinking fund payment date for that series shall be paid entirely in cash and shall be sufficient to redeem the principal amount of such Securities subject to a mandatory sinking fund payment without the option to deliver or credit Securities as provided in Section 3.04 and without the right to make any optional sinking fund payment, if any, with respect to such series.

Any sinking fund payment or payments (mandatory or optional) made in cash plus any unused balance of any preceding sinking fund payments made in cash which shall equal or exceed \$100,000 or the equivalent amount in the Specified Currency (if other than Dollars) (or a lesser sum if the Company shall so request or determine) with respect to the Securities of any particular series shall be applied by the Trustee (or by the Company if the Company is acting as its own paying agent) on the sinking fund payment date on which such payment is made (or, if such payment is made before a sinking fund payment date, on the next sinking fund payment date following the date of such payment) to the redemption of such Securities at the redemption price specified in such Securities for operation of the sinking fund together with accrued interest, if any, to the date fixed for redemption. Any sinking fund moneys not so applied or allocated by the Trustee (or by the Company if the Company is acting as its own paying agent) to the redemption of Securities shall be added to the next cash sinking fund payment received by the Trustee (or if the Company is acting as its own paying agent, segregated and held in trust as provided in Section 4.04) for such series and, together with such payment (or such amount so segregated), shall be applied in accordance with the provisions of this Section 3.05. Any and all sinking fund moneys with respect to the Securities of any particular series held by the Trustee (or if the Company is acting as its own paying agent, segregated and held in trust as provided in Section 4.04) on the last sinking fund payment date with respect to Securities of such series and not held for the payment or redemption of particular Securities of such series shall be applied by the Trustee (or by the Company if the Company is acting as its own paying agent), together with other moneys, if necessary, to be deposited (or segregated) sufficient for the purpose, to the payment of the principal of the Securities of that series at maturity.

The Trustee shall select or cause to be selected the Securities to be redeemed upon such sinking fund payment date in the manner specified in the second to last paragraph of Section 3.02, and the Company shall cause notice of the redemption thereof to be given in the manner provided in Section 3.02, except that the notice of redemption shall also state that the Securities are being redeemed by operation of the sinking fund. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 3.03.

On or before each sinking fund payment date, the Company shall pay to the Trustee in cash (or, if the Company is acting as its own paying agent, shall segregate and hold in trust as provided in Section 4.04) a sum equal to any interest accrued to the date fixed for redemption of Securities or portions thereof to be redeemed on such sinking fund payment date pursuant to this Section 3.05.

Neither the Trustee nor the Company shall redeem any Securities of a series with sinking fund moneys or mail (or otherwise deliver) any notice of redemption of such Securities by operation of the sinking fund for such series during the continuance of a default in payment of interest, if any, on such Securities or of any Event of Default (other than an Event of Default occurring as a consequence of this paragraph) with respect to such Securities, except that if the notice of redemption of any such Securities shall theretofore have been mailed (or otherwise delivered in accordance with the applicable procedures of the Depositary) in accordance with the provisions hereof, the Trustee (or the Company if the Company is acting as its own paying agent) shall redeem such Securities if cash sufficient for that purpose shall be deposited with the Trustee (or segregated by the Company) for that purpose in accordance with the terms of this Article 3. Except as aforesaid, any moneys in the sinking fund for such series at the time when any such default or Event of Default shall occur and any moneys thereafter paid into such sinking fund shall, during the continuance of such default or Event of Default, be held as security for the payment of such Securities; *provided, however*, that in case such default or Event of Default shall have been cured or waived as provided herein, such moneys shall thereafter be applied on the next sinking fund payment date for such Securities on which such moneys may be applied pursuant to the provisions of this Section 3.05.

Section 3.06. *Repayment at the Option of the Holder*. Any series of Securities may be made, by provision contained in or established pursuant to a supplemental indenture or a Board Resolution pursuant to Section 2.02 hereof, subject to repayment, in whole or in part, at the option of the holder on a date or dates specified prior to maturity, at a price equal to 100% of the principal amount thereof, together with accrued interest to the date of repayment, on such notice as may be required; *provided, however*, that the holder of a Security may only elect partial repayment in an amount that will result in the portion of such Security that will remain Outstanding after such repayment constituting an authorized denomination, or combination thereof, of such Securities.

#### ARTICLE 4

##### PARTICULAR COVENANTS OF THE COMPANY

Section 4.01. *Payment of Principal, Premium and Interest*. The Company covenants and agrees for the benefit of each series of Securities that it shall duly and punctually pay or cause to be paid the principal of, premium, if any, and interest, if any, on each of the Securities of that series at the places, at the respective times and in the manner provided in such Securities.

Section 4.02. *Offices for Notices and Payments, etc*. As long as any of the Securities of a series remain Outstanding, the Company shall designate and maintain in the Borough of Manhattan, The City of New York, an office or agency where the Securities of that series may be presented for payment, an office or agency where the Securities of that series may be presented for registration of transfer and for exchange as in this Indenture provided and an office or agency where notices and demands to or upon the Company in respect of the Securities of that series or of this Indenture may be served. In addition to such office or offices or agency or agencies, the Company may from time to time designate and maintain one or more additional offices or agencies within or

outside the Borough of Manhattan, The City of New York, where the Securities of that series may be presented for payment, registration of transfer or for exchange, and the Company may from time to time rescind such designation, as it may deem desirable or expedient. The Company shall give to the Trustee written notice of the location of each such office or agency and of any change of location thereof. In case the Company shall fail to maintain any such office or agency in the Borough of Manhattan, The City of New York, or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the Principal Office of the Trustee.

The Company hereby initially designates the Principal Office of the Trustee, acting through the corporate trust office of its affiliate, The Bank of New York Mellon, located at 101 Barclay Street, New York, New York 10286, as the office or agency of the Company in the Borough of Manhattan, The City of New York, where the Securities of each series may be presented for payment, for registration of transfer and for exchange as in this Indenture provided and where notices and demands to or upon the Company in respect of the Securities of each series or of this Indenture may be served.

Section 4.03. *Appointment to Fill Vacancies in Trustee's Office* . The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, shall appoint, in the manner provided in Section 7.10, a successor Trustee, so that there shall at all times be a Trustee with respect to each series of Securities hereunder.

Section 4.04. *Provision as to Paying Agent* . (a) If the Company shall appoint a paying agent other than the Trustee with respect to the Securities of any series, it shall cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal of, premium, if any, or interest, if any, on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the holders of the Securities of such series;

(ii) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities of such series) to make any payment of the principal of, premium, if any, or interest, if any, on the Securities of such series when the same shall be due and payable; and

(iii) that at any time during the continuance of any failure by the Company (or by any other obligor on the Securities of such series) specified in the preceding paragraph (ii), such payment agent will, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by it.

(b) If the Company shall act as its own paying agent with respect to the Securities of any series, it shall, on or before each due date of the principal of, premium, if any, or interest, if any, on the Securities of such series, set aside, segregate and hold in trust for the benefit of the holders of such Securities a sum sufficient to pay such principal, premium, if any, or interest, if any, so becoming due and shall promptly notify the Trustee of any failure to take such action and of any failure by the Company (or by any other obligor on the Securities of such series) to make any payment of the principal of, premium, if any, or interest, if any, on the Securities of such series when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by it, or any paying agent hereunder, as required by this Section 4.04, such sums to be held by the Trustee upon the trusts herein contained.

(d) Anything in this Section 4.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.04 is subject to Sections 12.04 and 12.05.

(e) Whenever the Company shall have one or more paying agents with respect to the Securities of any series, it shall, prior to each due date of the principal of, premium, if any, or interest, if any, on the Securities of such series, deposit with a designated paying agent a sum sufficient to pay the principal, premium, if any, and interest, if any, so becoming due, such sum to be held in trust for the benefit of the persons entitled to such principal, premium, if any, or interest, if any, and (unless such paying agent is the Trustee) the Company shall promptly notify the Trustee of any failure so to act.

Section 4.05. *Statement as to Compliance* . The Company shall furnish to the Trustee on or before May 1, in each year (beginning with the first May 1 following the first date of issuance of any Securities under this Indenture) a brief certificate (which need not comply with Section 14.06) from the principal executive, financial or accounting officer of the Company as required by Section 314(a)(4) of the Trust Indenture Act.

Section 4.06. *Additional Amounts* . If the Securities of a series provide for the payment of additional amounts, at least 10 days prior to the first interest payment date with respect to that series of Securities and at least 10 days prior to each date of payment of principal of, premium, if any, or interest on the Securities of that series if there has been a change with respect to the matters set forth in the below-mentioned Officer's Certificate, the Company shall furnish to the Trustee and the principal paying agent, if other than the Trustee, an Officer's Certificate instructing the Trustee and such paying agent whether such payment of principal of, premium, if any, or interest on the Securities of that series shall be made to holders of the Securities of that series without withholding or deduction for or on account of any tax, assessment or other governmental charge described in the Securities of that series. If any such withholding or deduction shall be required, then such Officer's Certificate shall specify by country the amount, if any, required to be withheld or deducted on such payments to such holders and shall certify the fact that additional amounts will be payable and the amounts so payable to each holder, and the Company shall pay to the Trustee or such paying agent the additional

amounts required to be paid by this Section 4.06. The Company covenants to indemnify the Trustee and any paying agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officer's Certificate furnished pursuant to this Section 4.06.

Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium, interest or any other amounts on, or in respect of, any Security of any series, such mention shall be deemed to include mention of the payment of additional amounts provided by the terms of such series established hereby or pursuant hereto to the extent that, in such context, additional amounts are, were or would be payable in respect thereof pursuant to such terms, and express mention of the payment of additional amounts (if applicable) in any provision hereof shall not be construed as excluding the payment of additional amounts in those provisions hereof where such express mention is not made.

Section 4.07. *Limitation on Liens.* The Company shall not, and shall not permit any Subsidiary of the Company to, issue, assume, or guarantee any Indebtedness secured by a Lien, other than Permitted Liens, upon any of the Company's or any of the Company's Subsidiaries' property, now owned or hereafter acquired, unless the Securities are equally and ratably secured with such Indebtedness until such time as such Indebtedness is no longer secured by a Lien.

Notwithstanding the preceding paragraph, the Company may, and may permit any Subsidiary of the Company to, issue, assume or guarantee any Indebtedness secured by a Lien, other than a Permitted Lien, without securing the Securities, provided that the aggregate principal amount of all Indebtedness of the Company and any Subsidiary of the Company then outstanding secured by any such Liens (other than Permitted Liens) does not exceed 15% of Consolidated Net Tangible Assets.

## ARTICLE 5

### SECURITYHOLDER LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01. *Securityholder Lists.* If and so long as the Trustee shall not be the Security Registrar for the Securities of any series, the Company and any other obligor on the Securities shall furnish or cause to be furnished to the Trustee a list in such form as the Trustee may reasonably require of the names and addresses of the holders of the Securities of such series pursuant to Section 312 of the Trust Indenture Act (a) semi-annually not more than 15 days after each record date for the payment of interest on such Securities, as hereinabove specified, as of such record date, and on dates to be determined pursuant to Section 2.02 for non-interest bearing Securities in each year, and (b) at such other times as the Trustee may request in writing, within thirty days after receipt by the Company of any such request as of a date not more than 15 days prior to the time such information is furnished.



Section 5.02. *Reports by the Company* . The Company covenants to file with the Trustee, within 30 days after the Company has filed the same with the SEC, copies of the annual reports and of the information, documents and other reports that the Company is required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act or pursuant to Section 314 of the Trust Indenture Act. Annual reports, information, documents and reports that are filed by the Company with the Commission via the EDGAR system or any successor electronic delivery procedure will be deemed to be filed with the Trustee at the time such documents are filed via the EDGAR system or such successor procedure. Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

Section 5.03. *Reports by the Trustee* . Any Trustee's report required under Section 313(a) of the Trust Indenture Act shall be transmitted on or before March 15 in each year beginning March 15, 2015, as provided in Section 313(c) of the Trust Indenture Act, so long as any Securities are Outstanding hereunder, and shall be dated as of a date convenient to the Trustee no more than 60 days prior thereto. A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with each stock exchange, if any, upon which any Securities are listed, with the Commission and with the Company. The Company shall notify the Trustee, in writing, when any Securities are listed on any stock exchange or delisted therefrom.

## ARTICLE 6

### REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

Section 6.01. *Events of Default* . The term “**Event of Default**” whenever used herein with respect to Securities of any series shall mean any one of the following events, and such other events as may be established with respect to the Securities of such series as contemplated by Section 2.02 hereof, continued for the period of time, if any, and after the giving of notice, if any, designated in this Indenture or as may be established with respect to such Securities as contemplated by Section 2.02 hereof, as the case may be, unless it is either inapplicable or is specifically deleted or modified in the applicable Board Resolution or in the supplemental indenture under which such series of Securities is issued, as the case may be, as contemplated by Section 2.02:

- (a) a default in the payment of any interest in respect of the Securities of such series when due that continues for 30 days;
- (b) a default in the payment of the principal of or any premium, if any, on the Securities of such series when due at their Stated Maturity, upon redemption, or otherwise;
- (c) default in the making or satisfaction of any sinking fund payment or analogous obligation as and when the same shall become due and payable by the terms of the Securities of such series;

(d) failure on the part of the Company duly to observe or perform any other of the covenants or agreements in this Indenture (other than a covenant or agreement in respect of the Securities of such series a default in whose observance or performance is elsewhere in this Section 6.01 specifically dealt with), which failure shall continue for a period of 60 days, or in the case of Section 5.02, 90 days, after the date on which written notice of such failure, requiring the same to be remedied and stating that such notice is a "Notice of Default" shall have been given to the Company by the Trustee, upon direction of holders of at least 25% in principal amount of the Outstanding Securities of such series; provided, however, that if such failure is not capable of cure within such 60-day or 90-day period, as the case may be, such 60-day or 90-day period, as the case may be, shall be automatically extended by an additional 60 days so long as (i) such failure is subject to cure, and (ii) the Company is using commercially reasonable efforts to cure such failure;

(e) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company bankrupt or insolvent, or approving as properly filed a petition seeking liquidation or reorganization of the Company under any applicable bankruptcy, insolvency, reorganization or other similar law, and such decree or order shall have continued unvacated and unstayed for a period of 90 days; an involuntary case shall be commenced under any applicable bankruptcy, insolvency, reorganization or other similar law in respect of the Company and shall continue undismissed for a period of 90 days or an order for relief in such case shall have been entered and such order shall have remained in force unvacated and unstayed for a period of 90 days; or a decree or order of a court having jurisdiction in the premises shall have been entered for the appointment on the ground of insolvency or bankruptcy of a receiver, custodian, liquidator, trustee or assignee in bankruptcy or insolvency of the Company or of its property, or for the winding up or liquidation of its affairs, and such decree or order shall have remained in force unvacated and unstayed for a period of 90 days;

(f) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, shall consent to the filing of a bankruptcy proceeding against it, shall file a petition or answer or consent seeking liquidation or reorganization under any applicable bankruptcy, insolvency, reorganization or other similar law, shall consent to the filing of any such petition or shall consent to the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make a general assignment for the benefit of creditors; and

(g) any other Event of Default provided in the applicable Board Resolution or in the supplemental indenture under which such series of Securities is issued, as the case may be, as contemplated by Section 2.02.

**Section 6.02. *Acceleration of Maturity ; Rescission and Annulment*** . If (i) upon the occurrence and continuance of an Event of Default specified in clause (a), (b) or (c) of the definition thereof with respect to the Securities of any series, the Company and the Trustee receive notice in writing that holders of not less than 25%, or (ii) upon the

occurrence and continuance of an Event of Default specified in clause (d) or (g) of the definition thereof with respect to the Securities of any series (unless, in the case of clause (g), otherwise provided for in the terms of the Securities of such series pursuant to Section 2.02), the Company and the Trustee receive notice in writing that holders of not less than a majority, in aggregate principal amount of the Outstanding Securities of such series have declared the principal of all Outstanding Securities of such series to be due and payable immediately, then upon any such declaration the same shall become and shall be immediately due and payable, anything contained in this Indenture or in the Securities of such series to the contrary notwithstanding. If an Event of Default described in clause (e) or (f) above shall occur and be continuing then the principal amount of all the Securities of such series then Outstanding under this Indenture shall be and become due and payable immediately, without notice or other action by any holder or the Trustee, to the full extent permitted by law.

At any time after a declaration of acceleration or automatic acceleration with respect to the Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereafter in this Article 6 provided, the holders of not less than a majority in principal amount of the Outstanding Securities of such series by written notice to the Company and the Trustee, may rescind and annul the declaration or automatic acceleration and its consequences if:

(a) the Company has paid or deposited with the Trustee a sum of money sufficient to pay (i) all overdue installments of interest on the Securities of such series, (ii) the principal of, and any premium on, the Securities of such series which have become due otherwise than by the declaration of acceleration or automatic acceleration and interest thereon, (iii) interest upon overdue interest on the Securities of such series at the Overdue Rate and (iv) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(b) all Events of Default, other than the non-payment of the principal of, and any premium and interest on, the Securities of such series which shall have become due solely by the acceleration, shall have been cured or waived as provided in Section 6.13.

*Section 6.03. Collection of Indebtedness and Suits for Enforcement by Trustee .*

The Company covenants that if

(a) default is made in the payment when due of any interest on the Securities of any series and such default continues for 30 days;

(b) default is made in the payment of the principal of or any premium on the Securities of any series when the principal or premium becomes due and payable at Maturity; or

(c) default is made in the making or satisfaction of any sinking fund payment or analogous obligation when the same becomes due and payable by the terms of the Securities of any series the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the holders of the Securities of such series the whole amount of money then due and payable with respect to the Securities of such series with interest upon the overdue principal, any premium and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest at the Overdue Rate and, in addition thereto, such further amount of money 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 and all other amounts due to the Trustee under Section 7.06.

If the Company fails to pay the money it is required to pay the Trustee pursuant to the preceding paragraph forthwith upon the demand of the Trustee, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the money so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon the Securities of such series and collect the monies adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities of such series wherever situated.

If an Event of Default occurs and is continuing with respect to the Securities of any series, the Trustee may, and if (i) an Event of Default specified in clause (a), (b), (c), (e) or (f) of the definition thereof occurs and is continuing with respect to the Securities of any series, and holders of not less than 25%, or (ii) an Event of Default specified in clause (d) or (g) of the definition thereof occurs and is continuing with respect to the Securities of any series (unless, in the case of clause (g), otherwise provided for in the terms of the Securities of such series pursuant to Section 2.02), and holders of not less than a majority, in aggregate principal amount of the Outstanding Securities of such series direct, so long as such holders shall have provided the Trustee with such indemnity as it shall require and subject to the provisions of Section 6.12, the Trustee shall, proceed to protect and enforce its rights and the rights of the holders of the Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or the Securities of such series or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy.

Section 6.04. *Proceedings by Trustee* . In case of an Event of Default hereunder, the Trustee may, in its discretion, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.05. *Trustee May Enforce Claims without Possession of Securities; Trustee May File Proofs of Claim* . All rights of action and claims under this Indenture or the Securities of any series may be prosecuted and enforced by the Trustee without the possession of any of the Securities of such series or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery or judgment, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, shall be for the ratable benefit of each and every holder of a Security of such series in respect of which such judgment has been recovered.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities of any series or the property of the Company or such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities of such series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any overdue principal, premium, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal and any premium and interest owing and unpaid in respect of the Securities of such series and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents or counsel) and of the holders of Securities of such series allowed in such judicial proceeding, and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each holder of Securities of such series 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 of Securities of such series, 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 7.06.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting any of the Securities of any series or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

Section 6.06. *Application of Moneys Collected by Trustee* . Any moneys collected by the Trustee pursuant to this Article 6 and, if an Event of Default has occurred and is continuing, any money or other property distributable in respect of the Company's obligations under this Indenture, shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Securities in respect of which moneys have been collected, and the notation thereon of the payment, if only partially paid, and upon surrender thereof if fully paid:

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FIRST: To the payment of all amounts due the Trustee pursuant to the provisions of Section 7.06;

SECOND: In case the principal of the Outstanding Securities in respect of which such moneys have been collected shall not have become due (at maturity, upon redemption, by declaration, repayment or otherwise) and be unpaid, to the payment of interest, if any, on such Securities, in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest (to the extent that payment of such interest is enforceable under applicable law) at the Overdue Rate applicable to such Securities, such payments to be made ratably to the person entitled thereto;

THIRD: In case the principal of the Outstanding Securities in respect of which such moneys have been collected shall have become due (at maturity, upon redemption, by declaration, repayment or otherwise), to the payment of the whole amount then owing and unpaid upon such Securities for principal, premium, if any, and interest, if any, with interest on the overdue principal, and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest, if any (to the extent that payment of such interest is enforceable under applicable law), at the Overdue Rate applicable to such Securities; and in case such moneys shall be insufficient to pay in full the whole amounts so due and unpaid upon such Securities, then to the payment of such principal, premium, if any, and interest, if any, without preference or priority of principal, and premium, if any, over interest, if any, or of interest, if any, over principal, and premium, if any, or of any installment of interest, if any, over any other installment of interest, if any, or of any such Security over any other such Security, ratably to the aggregate of such principal, premium, if any, and accrued and unpaid interest, if any; and

FOURTH: To the payment of the remainder, if any, to the Company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Section 6.07. *Limitations on Suits* . No holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(a) such holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of such series;

(b) (i) in the case of an Event of Default specified in clause (a), (b), (c), (e) or (f) of the definition thereof with respect to Securities of such series, holders of not less than 25%, or (ii) in the case of an Event of Default specified in clause (d) or (g) of the definition thereof with respect to Securities of such series (unless, in the case of clause (g), otherwise provided for in the terms of the Securities of such series pursuant to Section 2.02), holders of not less than a majority, in aggregate principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such holder or holders have offered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the holders of a majority in principal amount of the Outstanding Securities of such series;

it being understood and intended that no one or more of such holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture or any Security of such series to affect, disturb or prejudice the rights of any other such holders, or to obtain or to seek to obtain priority or preference over any other such holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such holders.

Section 6.08. *Unconditional Right of Holders to Receive Principal and any Premium and Interest.* Notwithstanding any other provision in this Indenture, the holder of any Security of any series shall have the right, which is absolute and unconditional, to receive payment of the principal of, and any premium and (subject to Section 2.04, Section 2.06, and Section 4.01) interest on, such Security of such series, on the Stated Maturity therefor specified in such Security (or, in the case of redemption, on the Redemption Date specified in the notice of redemption given as provided in Section 3.02) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such holder.

Section 6.09. *Restoration of Rights and Remedies* . If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such holder, then and in every such case the Company, the Trustee and each such holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and each such holder shall continue as though no such proceeding had been instituted.

Section 6.10. *Rights and Remedies Cumulative* . No right or remedy herein conferred upon or reserved to the Trustee or to each and every holder of a Security is intended to be exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11. *Delay or Omission Not Waiver* . No delay or omission of the Trustee or of any holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to any holder of a Security may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by such holder, as the case may be.

Section 6.12. *Control by Securityholders* .

The holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series provided that

- (a) such direction shall not be in conflict with any rule of law or with this Indenture or with the Securities of such series and would not involve the Trustee in personal liability,
- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (c) such direction is not unduly prejudicial to the rights of the other holders of Securities of such series not joining in such action.

Section 6.13. *Waiver of Past or Existing Defaults* . The holders of not less than a majority in principal amount of the Outstanding Securities of any series on behalf of the holders of all the Securities of such series, by notice to the Trustee, may waive any past or existing default or Event of Default hereunder with respect to the Securities of such series and its consequences, except a continuing default

- (a) in the payment of the principal of, any premium or interest on the Securities of such series, or
- (b) in respect of a covenant or provision hereof which under Article 10 hereof cannot be modified or amended without the consent of the holder of each Outstanding Security of such series.



Upon any such waiver, such default or Event of 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 6.14. *Notice of Defaults* . The Trustee shall, within 90 days after the occurrence of a default with respect to the Securities of any series, mail to all holders of Securities of such series, as the names and addresses of such holders appear upon the Security Register, notice of all defaults with respect to such series known to the Trustee, unless such defaults shall have been cured or waived before the giving of such notice (the term “**defaults**” for the purpose of this Section 6.14 being hereby defined to be the events specified in Section 6.01 or established with respect to such Securities as contemplated by Section 2.02, not including the periods of grace, if any, provided for therein or established with respect to such Securities as contemplated by Section 2.02, and irrespective of the giving of the notices, if any, provided for therein or established with respect to such Securities as contemplated by Section 2.02); *provided, however*, that except in the case of default in the payment of the principal of, premium, if any, or interest, if any, on any of the Securities of such series or in the making of any sinking fund installment or analogous obligation with respect to such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee or directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the holders of Securities of such series.

Section 6.15. *Waiver of Stay or Extension Laws* . The Company covenants that (to the extent that it may lawfully do so) it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company expressly waives (to the extent that it may lawfully do so) 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 6.16. *Undertaking to Pay for Costs* . All parties to this Indenture agree, and each holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, 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, omitted or suffered by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys’ fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 6.16 shall not apply (a) to any suit instituted by the Trustee, (b) to any suit instituted by any Securityholder of any series or group of such Securityholders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of such series or (c) to any suit instituted by any Securityholder for the enforcement of the payment of the principal of, premium, if any, or interest, if any, on any Security (i) on or after the due date expressed in such Security, (ii) on or after the date fixed for redemption or repayment or (iii) after such Security shall have become due by declaration.

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ARTICLE 7  
C ONCERNING T HE T RUSTEE

Section 7.01. *Duties and Responsibilities of Trustee* . With respect to the holders of any series of Securities issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to the Securities of such series and after the curing or waiving of all Events of Default which may have occurred with respect to such series, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default with respect to the Securities of a series has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture with respect to such series, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default with respect to the Securities of a series and after the curing or waiving of all Events of Default with respect to such series which may have occurred:

(i) the duties and obligations of the Trustee with respect to the Securities of a series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken, omitted or suffered to be taken by it in good faith in accordance with the direction of the holders of Securities of any series pursuant to Section 6.07, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to Securities of such series; and

(d) none of the provisions of this Indenture shall be construed as requiring the Trustee to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The provisions of this Section 7.01 are in furtherance of and subject to Section 315 of the Trust Indenture Act.

Section 7.02. *Reliance on Documents, Opinions, etc.* . In furtherance of and subject to the Trust Indenture Act, and subject to the provisions of Section 7.01:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Company Request or a Company Order (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors of the Company may be evidenced to the Trustee by a Board Resolution;

(c) the Trustee may consult with counsel and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, omitted or suffered to be taken by it hereunder in good faith and in accordance with such Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders, pursuant to the provisions of this Indenture, unless such Securityholders shall have offered reasonable security and indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred therein or thereby;

(e) the Trustee shall not be liable for any action taken, omitted or suffered by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(f) the Trustee shall not be bound to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document unless requested in writing so to do by the holders of a majority in aggregate principal amount of the Securities of any series affected then Outstanding; provided, however, that if the payment within a reasonable time to the Trustee of the costs and expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security conferred upon it by the terms of this Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to so proceeding; and the reasonable expenses of such investigation shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be deemed to have notice of any default hereunder 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 Principal Office of the Trustee and such notice references the Securities and this Indenture;

(i) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(j) in no event shall the Trustee be responsible or liable for special, punitive, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(k) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded; and

(l) in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 7.03. *No Responsibility for Recitals, etc.* . The recitals contained herein and in the Securities shall be taken as the statements of the Company (except in the Trustee's certificates of authentication), and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities, *provided* that the Trustee shall not be relieved of its duty to authenticate Securities only as authorized by this Indenture. The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds thereof.

Section 7.04. *Ownership of Securities* . The Trustee and any agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee or such agent.

Section 7.05. *Moneys to be Held in Trust* . Subject to the provisions of Sections 4.04, 12.04 and 12.05, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree in writing with the Company to pay thereon. So long as no Event of Default shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time upon the written order of the Company, signed by an Officer.

Section 7.06. *Compensation and Expenses of Trustee* . The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and, except as otherwise expressly provided, the Company shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, wilful misconduct or bad faith. The Company also covenants to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence, wilful misconduct or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of this trust and its duties hereunder, including the reasonable costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section 7.06 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

As security for the performance of the payment obligations of the Company under this Section 7.06, the Trustee shall have a lien prior to the Securities of each series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, and premium or interest on, particular Securities. Such

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lien shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this Indenture. Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services after a default or Event of Default specified in Section 6.01(e) or Section 6.01(f) hereof occurs, the expenses and the compensation for the services (including the fees and expense of its agents and counsel) are intended to constitute expense of administration under U.S. Code, Title 11 or any other similar foreign, federal or state law for the relief of debtors.

Section 7.07. *Officer's Certificate as Evidence* . Subject to the provisions of Section 7.01 and Section 7.02, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, omitting or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, omitted or suffered by it under the provisions of this Indenture upon the faith thereof.

Section 7.08. *Disqualification: Conflicting Interests for the Trustee* . The Trustee shall comply with the provisions of Section 310(b) of the Trust Indenture Act. To the extent permitted by the Trust Indenture Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series or under the Indenture dated as of November 14, 2011, between the Company and the Trustee.

Section 7.09. *Eligibility of Trustee* . The Trustee hereunder shall at all times be a corporation organized and doing business under the laws of the United States or any State, which (a) is authorized under such laws to exercise corporate trust powers and (b) is subject to supervision or examination by Federal or State authority and (c) shall have at all times a combined capital and surplus of not less than \$10,000,000. If such corporation publishes reports of condition at least annually, pursuant to law, or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 7.09, the combined capital and surplus of such corporation at any time shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No obligor upon this Indenture of any Securities or person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

The provisions of this Section 7.09 are in furtherance of and subject to Section 310(a) of the Trust Indenture Act.

Section 7.10. *Resignation or Removal of Trustee* . (a) The Trustee, or any Trustee or Trustees hereafter appointed, may at any time resign with respect to any one or more or all series of Securities by giving written notice of resignation to the Company and by mailing notice of such resignation to the holders of the applicable series of Securities at their addresses as they shall appear on the Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor Trustee or Trustees with respect to the applicable series by written instrument, in duplicate, executed in the name of and on behalf of the Company by a duly authorized officer, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor Trustee. If no successor Trustee shall have been so appointed with respect to any series and have accepted appointment within 60 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, or any Securityholder who has been a bona fide holder of a Security or Securities of the applicable series for at least six months may, subject to the provisions of Section 6.14, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

(a) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 310(b) of the Trust Indenture Act with respect to any series of Securities after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities of such series for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and Section 310(a) of the Trust Indenture Act with respect to any series of Securities and shall fail to resign after written request therefor by the Company or by any such Securityholder; or

(iii) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may remove the Trustee with respect to such series and appoint a successor Trustee with respect to such series by written instrument, in duplicate, executed in the name of and on behalf of the Company by a duly authorized officer, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor Trustee, or, subject to the provisions of Section 6.14, any Securityholder who has been a bona fide holder of a Security or Securities of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor Trustee with respect to such series.

(b) The holders of a majority in aggregate principal amount of the Securities of one or more series (each series voting as a class) or all series at the time Outstanding may remove the Trustee with respect to the applicable series or all series, as the case may be, and appoint with respect to the applicable series or all series, as the case may be, a successor Trustee by written notice of such action to the Company, the Trustee and the successor Trustee.

(c) Any resignation or removal of the Trustee with respect to any series and any appointment of a successor Trustee with respect to such series pursuant to any of the provisions of this Section 7.10 shall become effective upon acceptance of appointment by the successor Trustee as provided in Section 7.11.

(d) No predecessor Trustee shall be liable for the acts or omissions of any successor Trustee.

Section 7.11. *Acceptance by Successor Trustee* . Any successor Trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee with respect to any or all applicable series shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall, upon payment (or due provision therefor) of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor Trustee all the rights and powers with respect to such series of the Trustee so ceasing to act. Upon request of any such successor Trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor Trustee all such rights and powers.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and 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, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that 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.

No successor Trustee with respect to a series of Securities shall accept appointment as provided in this Section 7.11 unless at the time of such acceptance such successor Trustee shall, with respect to such series, be qualified under Section 310(b) of the Trust Indenture Act and eligible under the provisions of Section 7.09.



Upon acceptance of appointment by a successor Trustee with respect to any series as provided in this Section 7.11, the Company shall give notice thereof to the holders of Securities of each series affected, by mailing such notice to such holders at their addresses as they shall appear on the Security Register. If the Company fails to mail such notice within ten days after the acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be given at the expense of the Company.

Section 7.12. *Succession by Merger, etc.* . Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor to the Trustee hereunder, provided such corporation shall be qualified under Section 310(b) of the Trust Indenture Act and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

In case at the time such successor to the Trustee shall succeed to the trust created by this Indenture with respect to one or more series of Securities, any of such Securities shall have been authenticated but not delivered, any such successor to the Trustee by merger, conversion or consolidation may adopt the certificate of authentication of any predecessor Trustee, and deliver such Security so authenticated; and in case at that time any of such Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of such successor to the Trustee or, if such successor to the Trustee is a successor by merger, conversion or consolidation, the name of any predecessor hereunder; and in all such cases such certificate shall have the full force which it is anywhere in such Securities or in this Indenture provided that the certificate of the Trustee shall have.

Section 7.13. *Appointment of Authenticating Agent* . The Trustee may appoint an Authenticating Agent or Agents which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer, or partial conversion or partial redemption or pursuant to Section 2.08, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$10,000,000 and subject to supervision or examination by

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Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 7.13, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 7.13, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 7.13.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, *provided* that such corporation shall be otherwise eligible under this Section 7.13, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 7.13, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Securityholders as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 7.13.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 7.13.

If an appointment is made pursuant to this Section 7.13, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

Dated:

This is one of the Securities of the series designated therein described in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.,  
As Trustee

AUTHENTICATING AGENT,  
As Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory

ARTICLE 8  
C ONCERNING T HE S Ecurityholders

Section 8.01. *Action of Securityholders* . Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action) the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Securityholders in person or by agent or proxy appointed in writing, or (b) by the record of such Securityholders of Securities voting in favor thereof at any meeting of such Securityholders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of such Securityholders.

Section 8.02. *Proof of Execution by Securityholders* . Subject to the provisions of Section 7.01, Section 7.02 and Section 9.06, proof of the execution of any instrument by a Securityholder or his agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be reasonably satisfactory to the Trustee. The ownership of Securities shall be proved by the Security Register.

The record of any Securityholders' meeting shall be proved in the manner provided in Section 9.07 Section 9.07.

The Company may set a record date for purposes of determining the identity of Securityholders of Securities of any series entitled to vote or consent to or revoke any action referred to in Section 8.01, which record date may be set at any time or from time to time by notice to the Trustee, for any date or dates (in the case of any adjournment or reconsideration) not more than 60 days nor less than five days prior to the proposed date

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of such vote or consent, and thereafter, notwithstanding any other provisions hereof, with respect to Securities of any series, only Securityholders of Securities of such series of record on such record date shall be entitled to so vote or give such consent or revoke such vote or consent.

Section 8.03. *Who Are Deemed Absolute Owners* . The Company, the Trustee and any agent of the Company or of the Trustee may deem the person in whose name any Security shall be registered upon the books of the Company to be, and may treat him as, the owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of, premium, if any, and (subject to Section 2.04) interest, if any, on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or of the Trustee shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

No Beneficial Owner of a beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Security for all purposes whatsoever. None of the Company, the Trustee or any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 8.04. *Company-Owned Securities Disregarded* . In determining whether the holders of the requisite aggregate principal amount of Securities have concurred in any demand, request, notice, direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities with respect to which such determination is being made or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities with respect to which such determination is being made shall be disregarded and deemed not to be Outstanding for the purpose of any such determination; provided that, for the purposes of determining whether the Trustee shall be protected in relying on any such demand, request, notice, direction, consent or waiver, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 8.05. *Revocation of Consents; Future Holders Bound* . At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Securities of any or all series, as the case may be, specified in this Indenture in connection with such action, any holder of a Security which is shown by the evidence to be included in the Securities the holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid, any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders of such Security, irrespective of whether or not any notation in regard thereto is made upon such Security or any Security issued in exchange or substitution therefor.

## ARTICLE 9 SECURITYHOLDERS' MEETINGS

Section 9.01. *Purposes of Meetings* . A meeting of holders of Securities of any or all series may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Securityholders pursuant to any of the provisions of Article 6;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Securities of any or all series, as the case may be, under any other provision of this Indenture or under applicable law.

Section 9.02. *Call of Meetings by Trustee* . The Trustee may at any time call a meeting of holders of Securities of any or all series to take any action specified in Section 9.01, to be held at such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine. Notice of every meeting of the holders of Securities of any or all series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed to holders of Securities of each series affected at their addresses as they shall appear on the Security Register. Such notice shall be mailed not less than 10 nor more than 90 days prior to the date fixed for the meeting.

Section 9.03. *Call of Meetings by Company or Securityholders* . In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Securities then Outstanding of any series that may be affected by the action proposed to be taken at the meeting, shall have requested the Trustee to call a meeting of the holders of Securities of all series that may be so affected, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Securityholders, in the amount specified above, may determine the time and the place in said Borough of Manhattan, The City of New York, for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

Section 9.04. *Qualifications for Voting* . To be entitled to vote at any meeting of Securityholders a person shall (a) be a holder of one or more Securities with respect to which such meeting is being held or (b) be a person appointed by an instrument in writing as proxy by a holder of one or more such Securities. The only persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05. *Quorum; Adjourned Meetings* . The Persons entitled to vote a majority in aggregate principal amount of the Securities of the relevant series at the time Outstanding shall constitute a quorum for the transaction of all business specified in Section 9.01. No business shall be transacted in the absence of a quorum (determined as provided in this Section 9.05). In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of the holders of Securities (as provided in Section 9.03), be dissolved. In any other case the meeting shall be adjourned for a period of not less than ten days as determined by the chairman of the meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting shall be further adjourned for a period of not less than ten days as determined by the chairman of the meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 9.02, except that such notice must be mailed not less than five days prior to the date on which the meeting is scheduled to be reconvened.

Subject to the foregoing, at the second reconvening of any meeting adjourned for lack of a quorum, the Persons entitled to vote 25% in aggregate principal amount of the Securities of the relevant series then Outstanding shall constitute a quorum for the taking of any action set forth in the notice of the original meeting. Notice of the reconvening of an adjourned meeting shall state expressly the percentage of the aggregate principal amount of the Securities of the relevant series then Outstanding which shall constitute a quorum.

At a meeting or any adjourned meeting duly convened and at which a quorum is present as aforesaid, any resolution and all matters (except as limited by the proviso in Section 10.02) shall be effectively passed and decided if passed or decided by the Persons entitled to vote the lesser of (a) a majority in aggregate principal amount of the Securities of the relevant series then Outstanding and (b) 75% in aggregate principal amount of the Securities represented and voting at the meeting.

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Any holder of a Security who has executed in person or by proxy and delivered to the Trustee an instrument in writing complying with the provisions of Article 8 shall be deemed to be present for the purposes of determining a quorum and be deemed to have voted; *provided* that such holder of a Security shall be considered as present or voting only with respect to the matters covered by such instrument in writing.

Section 9.06. *Regulations* . Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Securityholders, in regard to proof of the Securityholder and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Securityholders, as provided in Section 9.03, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to the provisions of Section 8.04, at any meeting each Securityholder with respect to which such meeting is being held or proxy shall be entitled to vote the principal amount (in the case of Original Issue Discount Securities, such principal amount to be determined as provided in the definition of “Outstanding” in Section 1.01) of such Securities held or represented by him; *provided, however* , that no vote shall be cast or counted at any meeting in respect of any such Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of such Securities held by him or instruments in writing as aforesaid duly designating him as the person to vote on behalf of other such Securityholders. Any meeting of holders of Securities with respect to which a meeting was duly called pursuant to the provisions of Sections 9.02 or 9.03 may be adjourned from time to time by a majority of those present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.07. *Voting* . The vote upon any resolution submitted to any meeting of holders of Securities with respect to which such meeting is being held shall be by written ballots on which shall be subscribed the signatures of such holders of Securities or of their representatives by proxy and the principal amount (in the case of Original Issue Discount Securities, such principal amount to be determined as provided in the definition of “Outstanding” in Section 1.01) and number or numbers of such Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of

votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amount of the Securities (in the case of Original Issue Discount Securities, such principal amount to be determined as provided in the definition of “Outstanding” in Section 1.01) voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.08. *No Delay of Rights by Meeting* . Nothing in this Article 9 contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Securityholders of any or all series or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Securityholders of any or all such series under any of the provisions of this Indenture or of the Securities.

## ARTICLE 10

### S U P P L E M E N T A L I N D E N T U R E S

Section 10.01. *Supplemental Indentures without Consent of Securityholders* . The Company (when authorized by or pursuant to a Board Resolution) and the Trustee may from time to time and at any time, without the consent of the holders of the Securities of any series, enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

(a) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company contained in the Indenture and the Securities of any series; or

(b) to add to the covenants of the Company for the benefit of the holders of all or any series of Securities (as shall be specified in such supplemental indenture or indentures) or to surrender any right or power conferred upon the Company pursuant to this Indenture or the Securities of such series; provided that in respect of any such additional covenant, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee upon such an Event of Default or may limit the right of the holders of a majority in aggregate principal amount of the Securities of such series, to waive such an Event of Default; or

(c) to establish the forms or terms of Securities of any series as permitted by Sections 2.01 and 2.02;



(d) to evidence and provide for the acceptance of appointment under the indenture 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 the Indenture as shall be necessary to provide for or facilitate the administration of the trusts under this Indenture by more than one Trustee, pursuant to the requirements of Section 7.11 of the Indenture; or

(e) to cure any ambiguity, to correct or supplement any provision in the Indenture that may be defective or inconsistent with any other provision of the Indenture, or to make any other provisions with respect to matters or questions arising under this Indenture; provided that no such action pursuant to this clause (d) shall adversely affect the interests of the holders of the Securities of any series then Outstanding in any material respect; or

(f) to add any additional Events of Default with respect to all or any series of Securities (as shall be specified in such supplemental indenture); or

(g) to supplement any of the provisions of this Indenture to such extent as shall be necessary for the defeasance and discharge of any series of the Securities pursuant to Article 12 of the Indenture; provided that any such action shall not adversely affect the interests of any holder of an Outstanding Security of such series or any other Security in any material respect; or

(h) to add guarantees in respect of the Securities of one or more series and to provide for the terms and conditions of the release thereof; or

(i) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Securities of one or more series any property or assets and to provide for the terms and conditions of any release thereof; or

(j) to provide for definitive Securities in addition to or in place of Global Securities; or

(k) to provide for the issuance of Additional Securities of any series of Securities;

(l) to add to, change or eliminate any of the provisions contained herein or in any indentures supplemental hereto in respect of one or more series of Securities; *provided* that any such addition, change or elimination (i) shall not apply to, or modify the rights of any holder of, any Security of any series created prior to the execution of such supplemental indenture, or (ii) shall become effective only when no Securities of any series created prior to the execution of such supplemental indenture are Outstanding;

(m) to conform the text of this Indenture or the Securities of any series to any provision of the applicable description thereof in the related prospectus or prospectus supplement to the extent that such provision, in the Company's good faith judgment, was intended to be a recitation of a provision of this Indenture or the Securities of such series; or

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(n) to make any other change that does not adversely affect the rights of holders of Outstanding Securities in any material respect.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02. Supplemental Indentures with Consent of Securityholders. With the consent (evidenced as provided in Section 8.01 and Section 8.02) of the holders of a majority in aggregate principal amount of the Outstanding Securities of each series affected by such supplemental indenture at the time Outstanding, voting as a single class (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities of such series), the Company (when authorized by or pursuant to a Board Resolution) and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the holders of Securities of such series under this Indenture or under the Securities of such series; provided, however, that no such supplemental indenture shall, without the consent of the holder of each Security of such series affected thereby,

(a) change the Stated Maturity of the principal of, or a scheduled date for the payment of any interest on, the Securities of such series;

(b) reduce the principal amount thereof, the rate of interest payable on, or any premium payable upon the redemption of, the Securities of such series;

(c) change the Place of Payment for the Securities of such series or the Specified Currency in which the principal of, or any premium or interest on or with respect to the Securities of such series is payable;

(d) impair or affect the right of any holder of Securities of such series to institute suit for the enforcement of any payment of principal, premium, or interest on or with respect to any Security of such series on or after the date that such payment has become due and payable;

(e) with respect to the Securities of a series the terms of which provide for the making and consummation of an offer to repurchase such Securities in connection with a change of control (as defined in such terms), amend, change or modify the obligation of the Company to make and consummate such offer to repurchase after the related change of control has occurred, including amending, changing or modifying any definition relating thereto; or

(f) reduce the percentage in principal amount of the Outstanding Securities of such series, the consent of the holders of which is required for any such supplemental indenture, or the consent of whose holders is required for any waiver of certain defaults hereunder and their consequences provided for in this Indenture, or reduce the requirements in Article 9 for quorum or voting.

Notwithstanding the foregoing, holders of the Securities of any series shall vote as a separate class with respect to modifications or amendments that affect only the Securities of such series, and the holders of other series of Securities shall not have any voting rights with respect to such matters as they relate to the Securities of such series.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which shall have been included expressly and 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.

It shall not be necessary for the consent of the Securityholders under this Section 10.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Upon the request of the Company, accompanied by a copy of a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders (evidenced as provided in Section 8.01 and Section 8.02), the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Section 10.03. *Compliance with Trust Indenture Act; Effect of Supplemental Indentures* . Any supplemental indenture executed pursuant to the provisions of this Article 10 shall comply with the Trust Indenture Act, as then in effect. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of the Securities of the applicable series shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04. *Notation on Securities* . Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee and delivered in exchange for the Securities of such series then Outstanding.

Section 10.05. *Evidence of Compliance of Supplemental Indenture to be Furnished Trustee* . The Trustee, subject to the provisions of Sections 7.01 and Section 7.02, may receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10.

## ARTICLE 11

### CONSOLIDATION, MERGER AND SALES

Section 11.01. *Company May Consolidate, etc., Only on Certain Terms*. The Company shall not directly or indirectly consolidate with or merge with or into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets and properties and the assets and properties of its Subsidiaries (taken as a whole) in one or more related transactions to another Person, unless:

(a) either: (i) the Company is the survivor; or (ii) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition has been made is a Person formed, organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(b) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, lease, conveyance or other disposition has been made shall expressly assume, by an indenture (or indentures if at such time there is more than one Trustee) supplemental hereto, in form reasonably satisfactory to the Trustee, executed by the successor Person and delivered to the Trustee, the due and punctual payment of the principal of, and any premium and interest on, all the Securities and the performance of every obligation of the Company in this Indenture and the Securities of each series;

(c) either the Company or the successor Person shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article 11 and that all conditions precedent herein provided for relating to such transaction have been complied with; and

(d) immediately after giving effect to such transaction, no Event of Default or event which, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

Section 11.02. *Successor Person to be Substituted* . Upon any consolidation by the Company with or merger of the Company into any other Person or Persons where the Company is not the survivor or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties and assets of the Company and the properties and assets of its Subsidiaries (taken as a whole) to any Person or Persons in accordance with Section 11.01, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, assignment, transfer, lease, conveyance 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 with the same effect as if such successor Person had been named as the Company herein; and thereafter, except in the case of a lease, the predecessor Person shall be released from all obligations and covenants under this Indenture and the Securities.

In case of any such merger, consolidation, sale, conveyance, transfer or other disposition, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

## ARTICLE 12

### SATISFACTION AND DISCHARGE OF INDENTURE

Section 12.01. *Satisfaction and Discharge of Indenture* . Upon the direction of the Company by a Company Order, this Indenture shall cease to be of further effect with respect to the Securities of any series specified in such Company Order, and the Trustee, on receipt of a Company Order, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture with respect to the Securities of such series, when

(a) either:

(i) all Securities of such series theretofore authenticated and delivered have been accepted by the Trustee for cancellation (other than (i) Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.08 and (ii) Securities of such series the payment of money for which has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 12.05); or

(ii) all such Securities of such series not theretofore delivered to the Trustee for cancellation:

(A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year, or

(C) 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 the Company, in the case of (A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the holders of the Securities of such series for such purpose, (x) money in an amount sufficient or (y) Government Obligations, the scheduled payments of interest and principal in respect thereof in accordance with their terms shall be sufficient, or a combination of (x) and (y) that shall be sufficient (in the opinion of a nationally recognized Independent Registered Public Accounting Firm expressed in a written certification thereof delivered to the Trustee, which opinion need be given only if Government Obligations have been so deposited), without consideration of any reinvestment to pay and discharge the entire indebtedness on such Securities then Outstanding, including the principal of, and any premium and interest on, such Securities, to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof (including earlier redemption), as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Outstanding Securities of such series; and

(c) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Securities of such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any series of Securities, the obligations of the Company to the Trustee under Section 7.06, the obligations of the Trustee under Section 7.05, if money, Government Obligations, or a combination thereof shall have been deposited with the Trustee pursuant to subclause (ii) of clause (a) of this Section 12.01, and the obligations of the Company and the Trustee with respect to the Securities of such series under Section 2.06, Section 2.07, Section 2.08, Section 2.09, Section 4.02, Section 4.04 and Section 12.05 shall survive such satisfaction and discharge.

#### Section 12.02. *Legal Defeasance and Covenant Defeasance* .

(a) Legal defeasance of the Securities of any series under clause (b) of this Section 12.02 and covenant defeasance of the Securities of any series under Section 12.02(c) shall be applicable to the Securities of each series, and the Company may at its option by Board Resolution, at any time, with respect to such Securities, elect to have Section 12.02(b) or Section 12.02(c) be applied to the Outstanding Securities of any series upon compliance with the conditions set forth below in this Section 12.02.

(b) Upon the Company's exercise of the above option applicable to this Section 12.02(b) with respect to the Securities of any series, the Company shall be deemed to have been discharged from its obligations with respect to the Outstanding Securities of such series on the date the conditions set forth in clause (d) of this Section 12.02 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance shall mean that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such series, which shall thereafter be deemed to be "Outstanding" only for the purposes of the Sections of this Indenture referred to in clauses (i) and (ii) below, and to have satisfied all of its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of holders of the Outstanding Securities of such series to receive, solely from the trust fund described in clause (d) of this Section 12.02 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest, if any, on the Securities of such series when such payments are due, (ii) the obligations of the Company and the Trustee under Section 2.06, Section 2.07, Section 2.08, Section 2.09, Section 4.02, Section 4.04, Section 12.03 and Section 12.05 with respect to the Securities of such series, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder, and (iv) this Section 12.02. The Company may exercise its option under this Section 12.02(b) notwithstanding the prior exercise of its option under clause (c) of this Section 12.02 with respect to the Securities of such series.

(c) Upon the Company's exercise of the above option applicable to this Section 12.02(c) with respect to the Securities of any series, the Company shall be released from its obligations with respect to the Securities of such series to comply with any term, provision or condition under Section 11.01 and Section 4.07 (or any additional covenants applicable to any series of Securities as set forth in the related Board Resolution or supplemental indenture) on and after the date the conditions set forth in clause (d) of this Section 12.02 are satisfied (hereinafter, "covenant defeasance"), and the Securities of such series shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or act of holders (and the consequences of any thereof) in connection with any such covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance shall mean that, with respect to the Outstanding Securities of such series the Company may omit to comply with, and shall have no liability in respect of, any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under Section 6.01(d) or otherwise with respect to the Securities of such series, as the case may be, insofar as it relates to Section 11.01 and Section 4.07, but, except as specified above, the remainder of this Indenture and the Securities of such series shall be unaffected thereby; provided that notwithstanding a covenant defeasance with respect to Section 11.01, any Person to whom a sale, assignment, transfer, lease, conveyance or other disposition is made pursuant to Section 11.01, shall as a condition to such sale,

assignment, transfer, lease, conveyance or other disposition, assume by an indenture supplemental hereto in form satisfactory to the Trustee, executed by such successor Person and delivered to the Trustee, the obligations of the Company to the Trustee under Section 7.06 and the second to the last paragraph of this Section 12.02.

(d) The following shall be the conditions to application of clause (b) or (c) of this Section 12.02 to the Outstanding Securities of any series:

(i) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 7.09 who shall agree to comply with the provisions of this Section 12.02 applicable to it) as trust funds in trust solely for the benefit of the holders of the Securities of such series for the purpose of making the following payments, (x) money in an amount sufficient or (y) Government Obligations, the scheduled payments of interest and principal in respect thereof in accordance with their terms shall be sufficient, or a combination of (x) and (y) that shall be sufficient (in the opinion of a nationally recognized Independent Registered Public Accounting Firm expressed in a written certification thereof delivered to the Trustee, which opinion need be given only if Government Obligations have been so deposited), without consideration of any reinvestment to pay and discharge the entire indebtedness on such Securities then Outstanding, including the principal of, and any premium and interest on, such Securities, to the date of such deposit (in the case of Securities which have become due and payable) or to Maturity thereof (including earlier redemption), as the case may be.

(ii) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company is a party or by which it is bound.

(iii) No Event of Default with respect to the Securities of such series or event which with notice or lapse of time or both would become an Event of Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit (other than an Event of Default resulting from non compliance with any covenant from which the Company is released upon effectiveness of such defeasance or covenant defeasance, as applicable).

(iv) In the case of an election under clause (b) of this Section 12.02, the Company shall have delivered to the Trustee an Opinion of Counsel stating that

(A) the Company has received from the Internal Revenue Service a letter ruling, or there has been published by the Internal Revenue Service a Revenue Ruling, or

(B) since the date of execution of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred.



(v) In the case of an election under clause (c) of this Section 12.02, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the holders of the Outstanding Securities of such series will not recognize income, gain or loss for federal income tax purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(vi) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or covenant defeasance under clause (b) or (c) of this Section 12.02 (as the case may be) have been complied with.

(vii) If the Securities of such series are to be redeemed prior to Stated Maturity, notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made.

Following the deposit referred to in clause (d) of this Section 12.02, the Trustee, upon the request and at the cost and expense of the Company, will acknowledge in writing the discharge of the Company's obligations under the Securities of such series and this Indenture with respect to such series except for the surviving obligations specified above.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge, imposed on or assessed against the Government Obligations deposited pursuant to this Section 12.02 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the holders of the Outstanding Securities of any series.

Anything in this Section 12.02 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in clause (d) of this Section 12.02 which, in the opinion of a nationally recognized Independent Registered Public Accounting Firm expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Section 12.02.

Section 12.03. *Application of Trust Money* . All money and Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section 12.03, the Trustee and any such other trustee are referred to collectively as the "Trustee") pursuant to Section 12.01 or

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Section 12.02 in respect of the Outstanding Securities of any series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any paying agent (including the Company acting as its own paying agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has or Government Obligations have been deposited with or received by the Trustee; but such money and Government Obligations need not be segregated from other funds except to the extent required by law.

Section 12.04. *Paying Agent to Repay Moneys Held* . Upon the satisfaction and discharge of this Indenture all moneys then held by any paying agent of the Securities (other than the Trustee) shall, upon demand of the Company, be repaid to the Company or paid to the Trustee, and thereupon such paying agent shall be released from all further liability with respect to such moneys.

Section 12.05. *Return of Unclaimed Moneys* . Any moneys and Government Obligations deposited with or paid to the Trustee for payment of the principal of, premium, if any, or interest, if any, on Securities of any series and not applied but remaining unclaimed by the holders of Securities of such series for two years after the date upon which the principal of, premium, if any, or interest, if any, on the Securities of such series, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on written demand; and the holders of any Securities of such series shall thereafter look only to the Company for any payment which such holders may be entitled to collect and all liability of the Trustee with respect to such money shall thereupon cease.

Section 12.06. *Reinstatement* . If and for so long as the Trustee is unable to apply any money or Government Obligations held in trust pursuant to Section 12.01 or 12.02 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 Company's obligations under this Indenture and the Securities will be reinstated as though no such deposit in trust had been made. If the Company makes any payment of principal of or interest on any Securities because of the reinstatement of its obligations, it will be subrogated to the rights of the Securityholders of such Securities to receive such payment from the money or Government Obligations held in trust.

Section 12.07. *Qualifying Trustee* . Any trustee appointed pursuant to Section 12.02 for the purpose of holding trust funds deposited pursuant to that Section shall be appointed under an agreement in form acceptable to the Trustee and shall provide to the Trustee a certificate of such trustee, upon which certificate the Trustee shall be entitled to conclusively rely, that all conditions precedent provided for herein to the related defeasance or covenant defeasance have been complied with. In no event shall the Trustee be liable for any acts or omissions of said trustee.

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ARTICLE 13  
I MMUNITY OF I NCORPORATORS , S TOCKHOLDERS , O FFICERS AND D IRECTORS

Section 13.01. *Limitation on Individual Liability* . No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, equity holder, officer or director, as such, past, present or future, of the Company or any Affiliate thereof or of any successor, either directly or through the Company or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely obligations of the Company, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, equity holders, officers or directors, as such, of the Company or any successor, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any Security or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, equity holder, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any Security or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Security.

ARTICLE 14  
M ISCELLANEOUS P ROVISIONS

Section 14.01. *Provisions Binding on Company's Successors* . All the covenants, stipulations, promises and agreements in this Indenture contained by the Company shall bind its successors and assigns whether so expressed or not.

Section 14.02. *Official Acts by Successor Person* . Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation that shall at the time be the lawful sole successor of the Company.

Section 14.03. *Addresses for Notices, Notice to Holders, Waiver* . Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Securities on the Company may be given or served by being deposited postage prepaid by first class mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to WPX ENERGY, INC., 3500 One Williams Center, Tulsa, Oklahoma 74172 Attn: Treasurer. Any notice, direction, request or demand by any Securityholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Principal Office of the Trustee, addressed to the attention of its corporate trust office at The Bank of New York Mellon Trust Company, N.A., 601 Travis Street, 16<sup>th</sup> Floor, Houston, Texas 77002, Attn: Corporate Trust Administration.

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The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; *provided, however*, that (a) the party providing such electronic instructions or directions, subsequent to the transmission thereof, shall provide the originally executed instructions or directions to the Trustee in a timely manner and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions or directions notwithstanding such instructions or directions conflict or are inconsistent with a subsequent written instruction or direction or if the subsequent written instruction or direction is never received. The party providing instructions or directions by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, as aforesaid, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Where this Indenture provides for notice of holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each holder affected by such event, at his address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular holder shall affect the sufficiency of such notice with respect to other holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 14.04. *Governing Law* . THIS INDENTURE AND EACH SECURITY, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR ANY SECURITY, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 14.05. *Waiver of Trial by Jury* . EACH OF THE COMPANY, THE TRUSTEE AND EACH HOLDER OF A SECURITY, BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 14.06. *Evidence of Compliance with Conditions Precedent* . Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include: (a) a statement that the person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinion contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 14.07. *Legal Holidays* . Except as otherwise provided in any Security, in any case where the date of maturity of interest, if any, on or principal of, or premium, if any, on the Securities or the date fixed for redemption or repayment of any Security will be a date that is not a Business Day, then payment of such interest, if any, on or principal of or premium, if any, on the Securities need not be made on such date but may be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or a date fixed for redemption or repayment, and no interest shall accrue for the period from and after such date.

Section 14.08. *Securities in a Specified Currency other than Dollars* . Unless otherwise specified as contemplated by Section 2.02 with respect to a particular series of Securities, whenever for purposes of this Indenture any action may be taken by the holders of a specified percentage in aggregate principal amount of Securities of all series or all series affected by a particular action at the time Outstanding and, at such time, there are Outstanding any Securities of any series which are denominated in a Specified Currency other than Dollars, then the principal amount of Securities of such series which shall be deemed to be Outstanding for the purpose of taking such action shall be that amount of Dollars that could be obtained for such amount of such Specified Currency at the Market Exchange Rate. “ **Market Exchange Rate** ” shall mean, with respect to a Specified Currency, the noon Dollar buying rate in New York City for cable transfers of such Specified Currency published by the Federal Reserve Bank of New York. If such Market Exchange Rate is not available for any reason with respect to such Specified

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Currency, the Trustee shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York or such other quotations as the Trustee shall deem appropriate. The provisions of this paragraph shall apply in determining the equivalent principal amount in respect of Securities of a series denominated in a Specified Currency other than Dollars in connection with any action taken by holders of Securities pursuant to the terms of this Indenture, including, without limitation, any determination contemplated in Section 6.01 (c).

All decisions and determination of the Trustee regarding the Market Exchange Rate or any alternative determination provided for in the preceding paragraph shall be in its sole discretion and shall, in the absence of manifest error, be conclusive to the extent permitted by law for all purposes and irrevocably binding upon the Company and all Securityholders.

Section 14.09. *Trust Indenture Act to Control* . If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by, or with another provision (an “**incorporated provision**”) included in this Indenture by operation of, Sections 310 to 318, inclusive, of the Trust Indenture Act, such imposed duties or incorporated provision shall control.

Section 14.10. *Table of Contents, Headings, etc* . The table of contents and the titles 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.

Section 14.11. *Execution in Counterparts* . This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 14.12. *Separability; Benefits* . In case any one or more of the provisions contained in this Indenture or in the Securities shall for any reason be held to be invalid, illegal or unenforceable, in any respect, then, to the extent permitted by law, such invalidity, illegality or unenforceability of the remaining provisions shall not in any way be affected or impaired thereby. Nothing in this Indenture or in the Securities, expressed or implied, shall give to any person, other than the parties hereto and their successors hereunder, and the holders of the Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.13. *Certain Tax Information* . In order to comply with applicable tax laws, rules and regulations (inclusive of directives, guidelines and interpretations promulgated by competent authorities) in effect from time to time (“**Applicable Law**”) that a foreign financial institution, or issuer, trustee, paying agent, holder or other institution is or has agreed to be subject to related to this Indenture, the Company agrees (a) to provide to the Trustee upon its written request such information that is in the Company’s possession about holders of the Securities or other applicable parties and/or transactions (including any modification to the terms of such transactions) so the Trustee can determine whether it has tax related obligations under Applicable Law, and (b) that

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the Trustee shall be entitled to make any withholding or deduction from payments under this Indenture to the extent necessary to comply with Applicable Law for which the Trustee shall not have any liability. The terms of this Section shall survive the termination of this Indenture.

[ *Signature Page Follows* ]

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, as of the day and year first written above.

WPX ENERGY, INC.

By: /s/ J. Kevin Vann  
Name: J. Kevin Vann  
Title: Senior Vice President and Chief Financial  
Officer

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: /s/ Jonathan Glover  
Name: Jonathan Glover  
Title: Vice President

[ *Signature Page to Indenture* ]



**WPX ENERGY, INC.**

**AND**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

**as Trustee**

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**FIRST SUPPLEMENTAL INDENTURE**

**Dated as of September 8, 2014**

**to the**

**INDENTURE**

**Dated as of September 8, 2014**

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## TABLE OF CONTENTS

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|  | <u>P<br/>AGE</u> |
|--|------------------|
| ARTICLE 1  |                  |
| D EFINITIONS   |                  |
| Section 1.01. <i>Relation to Base Indenture</i>                          | 1                |
| Section 1.02. <i>Definition of Terms</i>                                 | 1                |
| ARTICLE 2  |                  |
| G E N E R A L T E R M S A N D C O N D I T I O N S O F T H E N O T E S    |                  |
| Section 2.01. <i>Designation and Principal Amount</i>                    | 5                |
| Section 2.02. <i>Maturity</i>  | 6                |
| Section 2.03. <i>Form, Payment and Appointment</i>                       | 6                |
| Section 2.04. <i>Global Notes</i>  | 6                |
| Section 2.05. <i>Interest</i>  | 7                |
| Section 2.06. <i>No Sinking Fund</i>                                     | 7                |
| Section 2.07. <i>Satisfaction and Discharge</i>                          | 8                |
| ARTICLE 3  |                  |
| R E D E M P T I O N O F T H E N O T E S                                  |                  |
| Section 3.01. <i>Optional Redemption</i>                                 | 8                |
| Section 3.02. <i>Election or Obligation to Redeem; Notice to Trustee</i> | 8                |
| Section 3.03. <i>Selection by Trustee of Notes to be Redeemed</i>        | 9                |
| Section 3.04. <i>Deposit of Redemption Price</i>                         | 9                |
| Section 3.05. <i>Notes Redeemed in Part</i>                              | 9                |
| Section 3.06. <i>Repurchases on the Open Market</i>                      | 10               |
| ARTICLE 4  |                  |
| C H A N G E O F C O N T R O L  |                  |
| Section 4.01. <i>Offer to Repurchase Upon Change of Control</i>          | 10               |
| ARTICLE 5  |                  |
| F O R M O F N O T E  |                  |
| Section 5.01. <i>Form of Note</i>  | 12               |
| ARTICLE 6  |                  |
| O R I G I N A L I S S U E O F N O T E S                                  |                  |
| Section 6.01. <i>Original Issue of Notes</i>                             | 12               |

---

ARTICLE 7  
M ISCELLANEOUS

|   |     |
|---|-----|
| Section 7.01. <i>Ratification of Indenture</i>            | 12  |
| Section 7.02. <i>Trustee Not Responsible for Recitals</i> | 12  |
| Section 7.03. <i>Governing Law</i>                        | 12  |
| Section 7.04. <i>Waiver of Trial by Jury</i>              | 12  |
| Section 7.05. <i>Table of Contents, Headings, etc</i>     | 13  |
| Section 7.06. <i>Execution in Counterparts</i>            | 13  |
| Section 7.07. <i>Separability; Benefits</i>               | 13  |
| EXHIBIT A <i>Form of 5.25% Senior Notes due 2024</i>      | A-1 |

THIS FIRST SUPPLEMENTAL INDENTURE (this “**Supplemental Indenture**”), dated as of September 8, 2014, is between WPX Energy, Inc., a Delaware corporation (the “**Company**”), and The Bank of New York Mellon Trust Company, N.A., a national banking association (the “**Trustee**”).

## RECITALS

WHEREAS, the Company has concurrently herewith executed and delivered to the Trustee an Indenture, dated as of September 8, 2014, between the Company and the Trustee (the “**Base Indenture**” and, as supplemented by this Supplemental Indenture, the “**Indenture**”), providing for the issuance from time to time of series of Securities of the Company;

WHEREAS, Section 10.01(c) of the Base Indenture provides for the Company and the Trustee to enter into an indenture supplemental to the Base Indenture to establish the forms or terms of Securities of any series as permitted by Section 2.01 and Section 2.02 of the Base Indenture;

WHEREAS, pursuant to Section 2.02 of the Base Indenture, the Company wishes to provide for the issuance of a new series of Securities to be known as its 5.25% Senior Notes due 2024 (the “**Notes**”), the form and terms of such Notes and the terms, provisions and conditions thereof to be set forth as provided in this Supplemental Indenture; and

WHEREAS, the Company has requested that the Trustee execute and deliver this Supplemental Indenture, and all requirements necessary to make this Supplemental Indenture a valid, binding and enforceable instrument in accordance with its terms, and to make the Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid, binding and enforceable obligations of the Company, have been done and performed, and the execution and delivery of this Supplemental Indenture has been duly authorized in all respects;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE 1 DEFINITIONS

Section 1.01. *Relation to Base Indenture* . This Supplemental Indenture constitutes an integral part of the Base Indenture.

Section 1.02. *Definition of Terms* . For all purposes of this Supplemental Indenture:

(a) Capitalized terms used herein without definition shall have the meanings set forth in the Base Indenture;

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- (b) a term defined anywhere in this Supplemental Indenture has the same meaning throughout;
  - (c) the singular includes the plural and vice versa;
  - (d) headings are for convenience of reference only and do not affect interpretation;
  - (e) the following terms have the meanings given to them in this Section 1.02(e):

“ **Adjusted Treasury Rate** ” shall mean, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for that Redemption Date.

“ **Change of Control** ” shall mean:

(a) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets (including Capital Stock of the Subsidiaries of the Company) of the Company and its Subsidiaries taken as a whole, to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) (other than the Company or its Subsidiaries);

(b) the adoption of a plan relating to the liquidation or dissolution of the Company;

(c) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of 50% or more of the equity securities of the Company entitled to vote for members of the Board of Directors or equivalent governing body of the Company on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(d) a majority of the members of the Board of Directors or equivalent governing body of the Company ceases to be composed of individuals (i) who were members of that board or equivalent governing body on the date the Notes were issued, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or

(iii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the Board of Directors).

“ **Change of Control Offer** ” shall have the meaning specified in Section 4.01(b).

“ **Change of Control Payment** ” shall have the meaning specified in Section 4.01(b)(i).

“ **Change of Control Payment Date** ” shall have the meaning specified in Section 4.01(b)(ii).

“ **Change of Control Triggering Event** ” shall have the meaning specified in Section 4.01(a).

“ **Comparable Treasury Issue** ” shall mean the United States Treasury security or securities selected by the Quotation Agent as having an actual or interpolated maturity comparable to the remaining term of the Notes being redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate notes of comparable maturity to the remaining term of the Notes.

“ **Comparable Treasury Price** ” shall mean, with respect to any Redemption Date:

(a) the average of the Reference Treasury Dealer Quotations for that Redemption Date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or

(b) if the Quotation Agent obtains fewer than three Reference Treasury Dealer Quotations, the average of all Reference Treasury Dealer Quotations so received.

“ **DTC** ” shall have the meaning set forth in Section 2.04(a).

“ **Global Notes** ” shall have the meaning set forth in Section 2.04(a).

“ **holder** ” means a Person in whose name a Note is registered.

“ **Interest Payment Date** ” shall have the meaning set forth in Section 2.05(b).

“ **Interest Period** ” shall have the meaning set forth in Section 2.05(a).

**“ Investment Grade Rating ”** shall mean a rating equal to or higher than: (a) Baa3 (or the equivalent) by Moody’s; or (b) BBB- (or the equivalent) by S&P, or, if either such entity ceases to rate the Notes for reasons outside of the Company’s control, the equivalent investment grade credit rating from any other Rating Agency.

**“ Maturity Date ”** shall have the meaning set forth in Section 2.02.

**“ Moody’s ”** shall mean Moody’s Investors Service, Inc. or, if Moody’s Investors Service, Inc. shall cease rating notes having a maturity at original issue of at least one year and such ratings business shall have been transferred to a successor Person, such successor Person; *provided , however* , that if there is no successor Person, then “Moody’s” shall mean any other nationally recognized rating agency, other than S&P, that rates notes having a maturity at original issuance of at least one year and that shall have been designated by the Company.

**“ Optional Redemption Price ”** shall mean, with respect to any redemption of Notes, the applicable redemption price set forth in the Notes.

**“ Quotation Agent ”** shall mean the Reference Treasury Dealer appointed as such agent by the Company.

**“ Rating Agencies ”** shall mean Moody’s and S&P, or if S&P or Moody’s or both shall not make a rating on the Notes publicly available (other than as a result of voluntary action, or inaction, on the part of the Company), a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company (as certified by a resolution of the Company’s Board of Directors) which shall be substituted for S&P or Moody’s, or both, as the case may be.

**“ Rating Decline ”** shall mean a decrease in the ratings of the Notes by one or more gradations (including gradations within categories as well as between rating categories) by each of the Rating Agencies on any date from the date of the public notice of an arrangement that could result in a Change of Control until the end of the 30-day period following public notice of the occurrence of the Change of Control (which 30-day period will be extended so long as the rating of the Notes is under publicly announced consideration for possible downgrade by either of the Rating Agencies and the other Rating Agency has either downgraded, or publicly announced that it is considering downgrading, the Notes). Notwithstanding the foregoing, if the Notes have an Investment Grade Rating by each of the Rating Agencies, then “Rating Decline” means a decrease in the ratings of the Notes by one or more gradations (including gradations within categories as well as between rating categories) by each of the Rating Agencies such that the rating of the Notes by each of the Rating Agencies falls below an Investment Grade Rating on any date from the date of the public notice of an arrangement that could result in a Change of Control until the end of the 30-day period following public notice of the occurrence of the Change of Control (which 30-day period will be extended so long as the rating of the Notes is under publicly announced consideration for possible downgrade by either of the Rating Agencies and the other Rating Agency has either downgraded, or publicly announced that it is considering downgrading, the Notes).

“ **Record Date** ” shall have the meaning set forth in Section 2.05(b).

“ **Redemption Date** ” shall mean, with respect to any Note or portion thereof to be redeemed, each date fixed for such redemption by or pursuant to this Supplemental Indenture and the Notes.

“ **Reference Treasury Dealer** ” shall mean each of (a) Wells Fargo Securities, LLC, Citigroup Global Markets Inc. and RBS Securities Inc., unless any of such entities ceases to be a primary U.S. Government securities dealer in New York City (a “ **Primary Treasury Dealer** ”), in which case the Company shall substitute therefor another Primary Treasury Dealer; and (b) any two other Primary Treasury Dealers selected by the Company.

“ **Reference Treasury Dealer Quotations** ” shall mean, with respect to any Reference Treasury Dealer and any Redemption Date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Quotation Agent by that Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding that Redemption Date.

“ **S&P** ” shall mean Standard & Poor’s Ratings Service or, if Standard & Poor’s Ratings Service shall cease rating notes having a maturity at original issue of at least one year and such ratings business shall have been transferred to a successor Person, such successor Person; *provided, however*, that if there is no successor Person, then “S&P” shall mean any other nationally recognized rating agency, other than Moody’s, that rates notes having a maturity at original issuance of at least one year and that shall have been designated by the Company.

The terms “ **Base Indenture** ,” “ **Company** ,” “ **Indenture** ,” “ **Notes** ,” “ **Supplemental Indenture** ,” and “ **Trustee** ” shall have the respective meanings set forth in the recitals to this Supplemental Indenture and the paragraph preceding such recitals.

## ARTICLE 2

### GENERAL TERMS AND CONDITIONS OF THE NOTES

Section 2.01. *Designation and Principal Amount* . The Notes may be issued from time to time upon written order of the Company for the authentication and delivery of Notes pursuant to Section 2.03 of the Base Indenture.

There is hereby authorized a series of Securities designated as 5.25% Senior Notes due 2024, limited in aggregate principal amount to U.S. \$500,000,000 (except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 2.06, 2.07, 2.08, 2.09, 3.03 or 10.04 of the Base Indenture or Section 4.01(d) hereof or pursuant to the last paragraph of Section 2.02 of the Base Indenture).



Section 2.02. *Maturity* . The date upon which the Notes shall become due and payable at final maturity, together with any accrued and unpaid interest, is September 15, 2024 (the “ **Maturity Date** ”).

Section 2.03. *Form, Payment and Appointment* . Except as provided in Section 2.04, the Notes shall be issued in fully registered, certificated form, bearing identical terms. Principal of and premium, if any, and interest on the Notes will be payable, the transfer of such Notes will be registrable, and such Notes will be exchangeable for Notes of a like aggregate principal amount bearing identical terms and provisions, at the office or agency of the Company maintained for such purpose in the Borough of Manhattan, The City of New York, which shall initially be the Principal Office of the Trustee, acting through the corporate trust office of its affiliate, The Bank of New York Mellon, located at 101 Barclay Street, New York, New York 10286; *provided, however* , that payment of interest due on an Interest Payment Date may be made at the option of the Company by check mailed to the Person entitled thereto at such address as shall appear in the Security Register or by wire transfer to an account appropriately designated by the Person entitled to payment, *provided* that the paying agent shall have received written notice of such account designation at least five Business Days prior to the date of such payment.

No service charge shall be made for any registration of transfer or exchange of the Notes, but the Company may require payment from the holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith.

The Security Registrar and paying agent for the Notes shall initially be the Trustee.

The Specified Currency of the Notes shall be U.S. Dollars.

Section 2.04. *Global Notes* .

(a) The Notes shall be issued initially in the form of one or more permanent Global Securities in registered form (each, a “ **Global Note** ”). The Depository Trust Company (“ **DTC** ”) shall initially act as the Depositary for the Notes. Each Global Note (i) shall be deposited with the Depositary or its custodian and registered in the name of DTC’s nominee, (ii) shall be delivered by the Trustee to such Depositary or pursuant to such Depositary’s instructions, and (iii) shall bear a legend substantially to the effect set forth in Section 2.12 of the Base Indenture.

(b) The aggregate amount of Outstanding Notes represented by any Global Note may from time to time be increased or decreased to reflect exchanges. The Trustee may make any endorsement on a Global Note to reflect the amount, or any increase or decrease in the amount, or changes in the rights of holders of the Notes represented thereby, in each case in accordance with the terms of the Indenture and the Notes. Each Global Note shall represent the aggregate amount of Notes from time to time endorsed thereon.

(c) Unless and until any Global Note for the Notes is exchanged for Notes in certificated form, such Global Note may be transferred, in whole but not in part, and any payments on the Notes evidenced by such Global Note shall be made, only to the Depositary or a nominee of the Depositary, or to a successor Depositary selected or approved by the Company or to a nominee of such successor Depositary, in each case as the Securityholder of such Notes.

Section 2.05. *Interest* .

(a) Interest payable on any Interest Payment Date, the Maturity Date or, if applicable, the Redemption Date, with respect to the Notes shall be the amount of interest accrued from, and including, the immediately preceding Interest Payment Date in respect of which interest has been paid or duly provided for (or from and including the original issue date of September 8, 2014, if no interest has been paid or duly provided for with respect to the Notes) to, but excluding, such Interest Payment Date, Maturity Date or, if applicable, Redemption Date, as the case may be (each, an “**Interest Period**”).

(b) Interest on the Notes shall accrue from September 8, 2014 and shall be payable semi-annually in arrears on March 15 and September 15 of each year (each, an “**Interest Payment Date**”), beginning on March 15, 2015 to, but excluding, the Maturity Date of the Notes. Interest shall be payable to the Persons in whose names the relevant Notes are registered at the close of business on the March 1 or September 1 (whether or not a Business Day), respectively, immediately prior to each Interest Payment Date (each, a “**Record Date**”) at the annual rate of 5.25% per year.

(c) The amount of interest payable for any full semi-annual Interest Period in respect of the Notes will be calculated on the basis of a 360-day year comprised of twelve 30-day months. The amount of interest payable for any period shorter than a full semi-annual Interest Period in respect of the Notes will be calculated on the basis of a 30-day month and, for any period less than a month, on the basis of the actual number of days elapsed per 30-day month. If any scheduled Interest Payment Date for the Notes falls on a day that is not a Business Day, then payment of interest payable on such Interest Payment Date will be postponed to the next succeeding day which is a Business Day (and no interest on such payment will accrue for the period from and after such scheduled Interest Payment Date).

(d) In the event that the Maturity Date, a Redemption Date or a Change of Control Payment Date for any Note falls on a day that is not a Business Day, then the related payments of principal, premium, if any, and interest will be made on the next succeeding day that is a Business Day (and no additional interest will accrue on the amount payable for the period from and after such Maturity Date, Redemption Date or a Change of Control Payment Date, as the case may be).

Section 2.06. *No Sinking Fund* . The Notes are not entitled to the benefit of any sinking fund.

Section 2.07. *Satisfaction and Discharge* . Article 12 of the Base Indenture contains provisions for the satisfaction and discharge of the Indenture and the legal and covenant defeasance of the obligations of the Company with respect to any series of Securities at any time upon compliance by the Company with certain conditions set forth therein, which provisions shall apply to the Notes.

ARTICLE 3  
REDEMPTION OF THE NOTES

Section 3.01. *Optional Redemption* .

(a) The Notes may be redeemed, in whole or in part, at the option of the Company pursuant to the terms set forth in (b) and (c) below. With respect to a redemption pursuant to clause (b) below, the Company shall give the Trustee notice of the related Redemption Price promptly after the determination thereof and the Trustee shall have no responsibility for determining such Redemption Price. Except as otherwise provided in this Article 3, Notes shall be redeemed in accordance with the provisions of Article 3 of the Base Indenture.

(b) The Company may, at any time or from time to time prior to June 15, 2024, redeem the Notes, in whole or in part, upon not less than 30 nor more than 60 days' notice, at a Redemption Price equal to the greater of:

(i) 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon to but excluding, the Redemption Date, and

(ii) as determined by the Quotation Agent, the sum of the present values of the remaining scheduled payments of principal of and interest on the Notes to be redeemed (not including any portion of payments of interest accrued as of the Redemption Date) discounted to the Redemption Date on a semiannual basis (assuming a 360-day year comprised of twelve 30-day months) at the Adjusted Treasury Rate, plus 50 basis points, plus accrued and unpaid interest thereon to but excluding the Redemption Date (provided, in each case, that interest payments due on or prior to the Redemption Date will be paid to the record holders of such Notes on the relevant Record Date).

(c) The Company may, at any time or from time to time on or after June 15, 2024, redeem the Notes, in whole or in part, at a Redemption Price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon to but excluding the Redemption Date ( *provided* , in each case, that interest payments due on or prior to the Redemption Date will be paid to the record holders of such Notes on the relevant Record Date).

Section 3.02. *Election or Obligation to Redeem; Notice to Trustee* .

The election pursuant to Section 3.01 of the Company to optionally redeem the Notes shall be evidenced by or pursuant to a Board Resolution. In case of any redemption of the Notes, the Company shall, at least 35 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of the Notes to be redeemed.

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Section 3.03. *Selection by Trustee of Notes to be Redeemed* .

If less than all of the Notes are to be redeemed, the particular Notes to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the Outstanding Notes not previously called for redemption by such method as the Trustee shall deem fair and appropriate; *provided, however*, that no such partial redemption shall reduce the portion of the principal amount of a Note not redeemed to less than \$2,000; *provided*, that beneficial interests in Notes represented by one or more Global Notes shall be selected for redemption by DTC in accordance with its standard procedures.

The Trustee shall promptly notify the Company and the Security Registrar (if other than itself) in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Supplemental Indenture, unless the context otherwise requires, all provisions relating to the redemption of Notes shall relate, in the case of any Notes redeemed or to be redeemed only in part, to the portion of the principal of such Notes which has been or is to be redeemed.

Section 3.04. *Deposit of Redemption Price* .

At or prior to 10:00 a.m., New York City time, on any Redemption Date, the Company shall deposit, with respect to the Notes called for redemption pursuant to Section 3.03 of the Base Indenture, with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 4.04 of the Base Indenture) an amount of money in Dollars sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) any accrued interest on all such Notes or portions thereof which are to be redeemed on that date.

If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium, until paid, shall bear interest from the Redemption Date at the rate borne by the Notes.

Section 3.05. *Notes Redeemed in Part* .

Any Note which is to be redeemed only in part shall be surrendered at any Place of Payment for such Note (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the holder of such Note without service charge, a new Note or Notes, containing identical

terms and provisions, 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 amount of the Note so surrendered. If a Global Note is so surrendered, the Company shall execute, and the Trustee shall authenticate and deliver to or on behalf of the Depositary for such Global Note as shall be specified in the Company Order with respect thereto to the Trustee, without service charge, a new Global Note in a denomination equal to and in exchange for the unredeemed portion of the principal of the Global Note so surrendered.

Section 3.06. *Repurchases on the Open Market* .

The Company or any Affiliate of the Company may at any time or from time to time repurchase any of the Notes in the open market or otherwise. Such Notes may, at the option of the Company or the relevant Affiliate of the Company, be held, resold or surrendered to the Trustee for cancellation.

ARTICLE 4  
C H A N G E O F C O N T R O L

Section 4.01. *Offer to Repurchase Upon Change of Control*.

(a) If a Change of Control occurs and is accompanied by a Rating Decline (together, a “ **Change of Control Triggering Event** ”), each holder of the Notes will have the right to require the Company to offer to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000 in excess thereof, *provided* that the unpurchased portion of any Notes must be in a minimum denomination of \$2,000) of such holder’s Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest, if any, to the date of purchase.

(b) Within 30 days following any Change of Control Triggering Event, the Company will mail a notice (the “ **Change of Control Offer** ”) to each holder of Notes with a copy to the Trustee stating:

(i) that a Change of Control Triggering Event has occurred and that such holder has the right to require the Company to purchase such holder’s Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest, if any, to the date of purchase (the “ **Change of Control Payment** ”);

(ii) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed and which may be up to five days after the expiration of the Change of Control Offer) (the “ **Change of Control Payment Date** ”); and

(iii) the procedures determined by the Company, consistent with the Indenture, that a holder must follow in order to have its Notes repurchased.

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(c) On the Change of Control Payment Date the Company will, to the extent lawful:

(i) accept for payment all Notes or portions thereof (in integral multiples of \$1,000 or an integral multiple of \$1,000 in excess thereof; *provided* that the unpurchased portion of any Note must be in a minimum denomination of \$2,000) properly tendered and not withdrawn under the Change of Control Offer;

(ii) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions thereof so tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of such Notes or portions thereof being purchased by the Company.

(d) The Paying Agent will promptly mail or otherwise deliver to each holder of Notes so tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in a principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof.

(e) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.01, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.01 by virtue of such compliance.

If the Change of Control Payment Date is on or after a Record Date and on or before the related Interest Payment Date for the Notes, accrued and unpaid interest, if any, will be paid to the Person in whose name such Note is registered at the close of business on such Record Date, and no additional interest will be payable to holders who tender pursuant to the Change of Control Offer.

The Company will not be required to make a Change of Control Offer upon a Change of Control Triggering Event if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth herein and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

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ARTICLE 5  
FORM OF NOTE

Section 5.01. *Form of Note* .

(a) The Notes and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the form attached as Exhibit A hereto, with such changes therein as the officers of the Company executing the Notes (by manual or facsimile signature) may approve, such approval to be conclusively evidenced by their execution thereof.

ARTICLE 6  
ORIGINAL ISSUE OF NOTES

Section 6.01. *Original Issue of Notes* . The Notes having an aggregate principal amount of U.S. \$500,000,000 (subject to the last paragraph of Section 2.02 of the Base Indenture) may from time to time, upon execution of this Supplemental Indenture, be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Notes to or upon the written order of the Company pursuant to Section 2.03 of the Base Indenture without any further action by the Company (other than as required by the Base Indenture).

ARTICLE 7  
MISCELLANEOUS

Section 7.01. *Ratification of Indenture* . The Base Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Base Indenture in the manner and to the extent herein and therein provided.

Section 7.02. *Trustee Not Responsible for Recitals* . The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

Section 7.03. *Governing Law* . THIS SUPPLEMENTAL INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE OR ANY NOTE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 7.04. *Waiver of Trial by Jury* . EACH OF THE COMPANY, THE TRUSTEE AND EACH HOLDER OF NOTES, BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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Section 7.05. *Table of Contents, Headings, etc* . The table of contents and the titles and headings of the articles and sections of this Supplemental 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.

Section 7.06. *Execution in Counterparts* . This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 7.07. *Separability; Benefits* . In case any one or more of the provisions contained in this Supplemental Indenture or in the Notes shall for any reason be held to be invalid, illegal or unenforceable, in any respect, then, to the extent permitted by law, such invalidity, illegality or unenforceability of the remaining provisions shall not in any way be affected or impaired thereby. Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall give to any person, other than the parties hereto and their successors hereunder, and the holders of the Notes, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

[ *Signature Page Follows* ]



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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, as of the day and year first written above.

WPX ENERGY, INC.

By: /s/ J. Kevin Vann  
Name: J. Kevin Vann  
Title: Senior Vice President and Chief Financial  
Officer

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: /s/ Jonathan Glover  
Name: Jonathan Glover  
Title: Vice President

[ *Signature Page to First Supplemental Indenture* ]

[IF THIS NOTE IS TO BE A GLOBAL SECURITY, INSERT:]

THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), OR A NOMINEE OF DTC. THIS NOTE IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY DTC TO A NOMINEE OF DTC, OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

**WPX ENERGY, INC.**

5.25% Senior Notes due 2024

CUSIP: 98212B AE3

No. \_\_\_\_\_

\$ \_\_\_\_\_

WPX ENERGY, INC., a corporation organized and existing under the laws of Delaware (hereinafter called the “**Company**,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, [the principal sum of \$ \_\_\_\_\_] <sup>1</sup> on September 15, 2024 (such date is hereinafter referred to as the “**Maturity Date**”), and to pay interest thereon from September 8, 2014 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually in arrears on March 15 and September 15 of each year (each, an “**Interest Payment Date**”), commencing March 15, 2015, at the rate of 5.25% per annum, until the principal hereof is paid or duly provided for or made available for payment.

<sup>1</sup> USE THE FOLLOWING LANGUAGE INSTEAD FOR GLOBAL NOTES: [the principal sum as set forth in the Schedule of Increases or Decreases In Note attached hereto]

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The amount of interest payable for any full semi-annual Interest Period will be calculated on the basis of a 360-day year comprised of twelve 30-day months. The amount of interest payable for any period shorter than a full semi-annual Interest Period will be calculated on the basis of a 30-day month and, for any period less than a month, on the basis of the actual number of days elapsed per 30-day month. In the event that any scheduled Interest Payment Date falls on a day that is not a Business Day, then payment of interest payable on such Interest Payment Date will be postponed to the next succeeding day which is a Business Day (and no interest on such payment will accrue for the period from and after such scheduled Interest Payment Date). The term “ **Business Day** ” shall mean each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York or another Place of Payment are authorized or required by law, regulation or executive order to close. The term “ **Place of Payment** ” shall mean the place or places where the principal of, or any premium or interest on, this Note are payable.

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Note, or any predecessor Note, is registered at the close of business on the Record Date for such Interest Payment Date.

Payment of the principal of, premium, if any, and interest on this Note will be made at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York, which shall initially be the Principal Office of the Trustee, acting through the corporate trust office of its affiliate, The Bank of New York Mellon, located at 101 Barclay Street, New York, New York 10286, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however* , that payment of interest due on an Interest Payment Date may be made at the option of the Company by check mailed to the Person entitled thereto at such address as shall appear in the Security Register or by wire transfer to an account appropriately designated by the Person entitled to payment, *provided* that the paying agent shall have received written notice of such account designation at least five Business Days prior to the date of such payment.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

WPX ENERGY, INC.

By: \_\_\_\_\_  
Name:  
Title:

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TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated therein described in the within-mentioned Indenture.

Dated: \_\_\_\_\_

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Signatory

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## REVERSE OF NOTE

This Note is one of a duly authorized issue of securities of the Company (herein called the “**Notes**”), issued and to be issued in one or more series under an Indenture (the “**Base Indenture**”), dated as of September 8, 2014, between the Company and The Bank of New York Mellon Trust Company, N.A., as Trustee (herein called the “**Trustee**,” which term includes any successor trustee), as amended and supplemented by the First Supplemental Indenture, dated as of September 8, 2014, between the Company and the Trustee (the “**First Supplemental Indenture**,” and the Base Indenture as supplemented by the First Supplemental Indenture, the “**Indenture**”), to which Indenture reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. This Note is one of the series designated on the face hereof, initially limited in aggregate principal amount to \$500,000,000.

All terms used but not defined in this Note that are defined in the Indenture shall have the meaning assigned to them in the Indenture.

Except as otherwise may be specified in the Indenture, at any time or from time to time prior to June 15, 2024, the Company shall have the right to redeem the Notes, in whole or in part, upon not less than 30 days nor more than 60 days’ notice at its option, at a redemption price equal to the greater of:

(i) 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon to, but excluding, the Redemption Date; and

(ii) as determined by the Quotation Agent, the sum of the present values of the remaining scheduled payments of principal of and interest on the Notes to be redeemed (not including any portion of payments of interest accrued as of the Redemption Date), discounted to the Redemption Date on a semiannual basis (assuming a 360-day year comprised of twelve 30-day months) at the Adjusted Treasury Rate, plus 50 basis points, plus accrued and unpaid interest thereon to but excluding the Redemption Date (*provided*, in each case, that interest payments due on or prior to the Redemption Date will be paid to the record holders of such Notes on the relevant Record Date).

At any time or from time to time on or after June 15, 2024, the Company shall have the right to redeem the Notes, in whole or in part, at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest thereon to, but excluding, the Redemption Date (*provided*, in each case, that interest payments due on or prior to the Redemption Date will be paid to the record holders of such Notes on the relevant Record Date).

The term “**Optional Redemption Price**” means, with respect to any redemption of Notes, the applicable redemption price for such Notes set forth in the preceding two paragraphs; and the term “**Redemption Date**” means, with respect to any redemption of Notes, the date fixed for such redemption pursuant to the Indenture and the Notes.

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The Company shall mail (or otherwise deliver in accordance with the applicable procedures of the Depositary) notice of any redemption to the registered holders of the Notes to be redeemed at least 30 and not more than 60 days prior to the Redemption Date. If Notes are only partially redeemed pursuant to the preceding paragraphs, the Notes to be redeemed will be selected by the Trustee in such manner as in its sole discretion it shall deem appropriate and fair; *provided* that if at the time of redemption the Notes to be redeemed are registered as a Global Note, the Depositary shall determine, in accordance with its procedures, the principal amount of the Notes to be redeemed held by each of its participants that holds a position in such Notes. The Optional Redemption Price for any Notes to be redeemed shall be paid prior to 12:00 noon, New York City time, on the Redemption Date or at such later time as is then permitted by the rules of the Depositary for the related Notes (if then registered as a Global Note); *provided* that the Company shall deposit with the Trustee an amount sufficient to pay the Optional Redemption Price for the Notes to be redeemed by 10:00 a.m., New York City time, on the date such Optional Redemption Price is to be paid.

In the event of redemption of this Note in part only, a new Note or Notes for the unredeemed portion hereof shall be issued in the name of the holder hereof upon the cancellation hereof. Except as set forth in the preceding paragraphs and in Article 3 of the First Supplemental Indenture, the Company may not redeem the Notes at its option prior to the Maturity Date.

Upon a Change of Control Triggering Event, the Company may be required to offer to repurchase all or any part of the Notes.

The Notes are not entitled to the benefit of any sinking fund.

The Indenture contains provisions for defeasance of the obligations of the Company at any time upon compliance by the Company with certain conditions set forth therein, which provisions apply to the Notes.

If an Event of Default with respect to Notes shall occur and be continuing, the principal of the Notes may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the holders of the Notes at any time by the Company and the Trustee, with the consent of the holders of a majority in the aggregate principal amount of the Securities of each series affected thereby at the time Outstanding, voting as a single class. The Indenture also contains provisions permitting the holders of specified percentages in principal amount of the Notes at the time Outstanding, on behalf of the holders of all Notes, to waive certain past defaults under the Indenture and their consequences. Any such consent or waiver by the holder of this Note shall be conclusive and binding upon such holder and upon all future holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

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As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Security Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in any place where the principal of and interest on this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by the holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Notes are issuable only in registered form without coupons in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, except as provided for in Section 2.04 of the First Supplemental Indenture. As provided in the Indenture and subject to certain limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes of a different authorized denomination, as requested by the holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note is overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

The Company will furnish a copy of the Indenture to any holder upon written request and without charge.



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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Note to:

\_\_\_\_\_

\_\_\_\_\_

(Insert assignee's social security or tax identification number)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Insert address and zip code of assignee) and irrevocably appoints

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

agent to transfer this Note on the books of the Company. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature:

\_\_\_\_\_  
Signature Guarantee: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Note)

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## SIGNATURE GUARANTEE

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**SCHEDULE OF INCREASES OR DECREASES IN NOTE**

The initial principal amount of this Note is \$ . The following increases or decreases in the principal amount of this Note have been made:

| <u>Date</u> | <u>Amount of decrease in<br/>principal amount of<br/>this Note</u> | <u>Amount of increase in<br/>principal amount of<br/>this Note</u> | <u>Principal amount of<br/>this Note following<br/>such decrease or<br/>increase</u> | <u>Signature of<br/>authorized signatory<br/>of Trustee</u> |
|-------------|--|--|--|---|
|-------------|--|--|--|---|

## Weil, Gotshal & Manges LLP

767 Fifth Avenue  
New York, NY 10153-0119  
+1 212 310 8000 tel  
+1 212 310 8007 fax

September 8, 2014

WPX Energy, Inc.  
One Williams Center  
Tulsa, Oklahoma 74172

Ladies and Gentlemen:

We have acted as counsel to WPX Energy, Inc. a Delaware corporation (the “Company”), in connection with (i) the preparation and filing with the Securities and Exchange Commission of the Company’s Registration Statement on Form S-3 (File No. 333-198523) filed on September 3, 2014 (the “Registration Statement”), under the Securities Act of 1933, as amended (the “Securities Act”); and (ii) the issuance and sale by the Company of \$500,000,000 aggregate principal amount of 5.25% Senior Notes due 2024 (the “Notes”). The Notes were issued under a base indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), dated as of September 8, 2014, as supplemented by the supplemental indenture (the “Indenture”).

In so acting, we have examined originals or copies (certified or otherwise identified to our satisfaction) of (i) the Amended and Restated Certificate of Incorporation of the Company; (ii) the Amended and Restated Bylaws of the Company; (iii) the Registration Statement; (iv) the prospectus, dated September 3, 2014, contained within the Registration Statement; (v) the preliminary prospectus supplement, dated September 3, 2014, contained within the Registration Statement; (vi) the free writing prospectus filed on September 3, 2014 contained within the Registration Statement; (vii) the prospectus supplement, dated September 3, 2014; (viii) the Indenture; (ix) the Notes; (x) the Underwriting Agreement, dated September 3, 2014, among the Company and Wells Fargo Securities, LLC, Citigroup Global Markets Inc. and RBS Securities Inc., as representatives of the several underwriters named in Exhibit A thereto; and (xi) such corporate records, agreements, documents and other instruments, and such certificates or comparable documents of public officials and of officers and representatives of the Company, and have made such inquiries of such officers and representatives, as we have deemed relevant and necessary as a basis for the opinions hereinafter set forth.

In such examination, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, conformed or photostatic copies and the authenticity of the originals of such latter documents. As to all questions of fact material to this opinion that have not been independently established, we have relied upon certificates or comparable documents of officers and representatives of the Company.

Based on the foregoing and subject to the qualifications stated herein, we are of the opinion that the Notes (assuming due authentication and delivery of the Notes by the Trustee in accordance with the terms of the Indenture) have been duly executed and authenticated in accordance with the Indenture and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

The opinions expressed herein are limited to the corporate laws of the State of Delaware and the laws of the State of New York, and we express no opinion as to the effect on the matters covered by this letter of the laws of any other jurisdiction.

We hereby consent to the filing of this letter as an exhibit to the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the prospectus which is a part of the Registration Statement. This opinion and consent may be incorporated by reference in a subsequent registration statement on Form S-3 filed pursuant to Rule 462(b) under the Act. In giving such consent we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Securities and Exchange Commission.

Very truly yours,  
/s/ WEIL, GOTSHAL & MANGES LLP