

SPARK ENERGY, INC.

FORM 8-K (Current report filing)

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

FORM 8-K

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

Date of Report (Date of earliest event reported): July 29, 2014

Spark Energy, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-36559
(Commission
File Number)

46-5453215
(IRS Employer
Identification Number)

2105 CityWest Blvd., Suite 100
Houston, Texas 77042
(Address of Principal Executive Offices)
(Zip Code)

(713) 600-2600
(Registrant's Telephone Number, Including Area Code)

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.

On August 1, 2014, Spark Energy, Inc., a Delaware corporation (the “Company”), completed its initial public offering (the “Offering”) of 3,000,000 shares of its Class A common stock, par value \$0.01 per share (“Class A Common Stock”), at a price to the public of \$18.00 per share (\$16.74 per share net of underwriting discounts and commissions and structuring fees) pursuant to the Company’s Registration Statement on Form S-1 (File No. 333-196375) (as amended, the “Registration Statement”). The material terms of the Offering are described in the prospectus, dated July 28, 2014 (the “Prospectus”), filed by the Company with the Securities and Exchange Commission (the “SEC”) on July 30, 2014.

Transaction Agreement II

On July 30, 2014, in connection with the Offering, the Company entered into the Transaction Agreement II (the “Transaction Agreement”), by and among the Company, Spark HoldCo, LLC, a Delaware limited liability company (“Spark HoldCo”), NuDevco Retail, LLC, a Texas limited liability company (“NuDevco Retail”), NuDevco Retail Holdings, LLC, a Texas limited liability company (“NuDevco Retail Holdings”), Spark Energy Ventures, LLC, a Texas limited liability company (“SEV”), NuDevco Partners Holdings, LLC, a Texas limited liability company (“NuDevco Partners”) and Associated Energy Services, LP, a Texas limited partnership (“AES”), providing for, among other things: (a) the adoption and filing of the Amended and Restated Certificate of Incorporation of the Company (the “Amended and Restated Certificate”) and the cancellation of the Company’s previously issued and outstanding capital; (b) the issuance by the Company of 10,750,000 shares of Class B common stock, par value \$0.01 per share (the “Class B Common Stock”) to Spark HoldCo; (c) the distribution by Spark HoldCo of 10,612,500 shares of Class B Common Stock to NuDevco Retail Holdings and 137,500 shares of Class B Common Stock to NuDevco Retail; (d) the execution and delivery of the Second Amended and Restated Limited Liability Company Agreement of Spark HoldCo (the “Spark HoldCo LLC Agreement”); (e) the purchase by the Company of 2,977,222 units in Spark HoldCo (the “Spark HoldCo Units”) from NuDevco Retail Holdings and the repayment of a \$50,000 note payable using proceeds from the Offering; (f) the entrance into the Credit Agreement by and among the Company, as parent, Spark HoldCo, Spark Energy, LLC, a Texas limited liability company (“SE”) and Spark Energy Gas, LLC, a Texas limited liability company (“SEG”), as co-borrowers, SG Americas Securities, LLC, as sole lead arranger and sole bookrunner, Natixis, New York Branch, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., New York Branch, and RB International Finance (USA) LLC, as co-documentation agents and Compass Bank, as senior managing agent (the “New Credit Facility”); (g) the repayment of indebtedness by AES and the forgiveness of certain short term borrowings by AES; and (h) the distribution by SEV to NuDevco Partners of all of its interest in NuDevco Retail Holdings.

The foregoing description is qualified in its entirety by reference to the full text of the Transaction Agreement, which is attached as Exhibit 4.1 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Amended and Restated Credit Facility

On August 1, 2014, in connection with the closing of the Offering, the Company entered into the New Credit Facility. The New Credit Facility has a borrowing capacity of \$70.0 million and a maturity of two years from the closing of the Offering. If no event of default has occurred, the co-borrowers have the right, subject to approval by the administrative agent and certain lenders, to increase the borrowing capacity under the New Credit Facility to up to \$120.0 million. The borrowing base is calculated primarily based on 80-90% of the value of eligible accounts receivable and unbilled product sales (depending on the credit quality of the counterparties) and inventory and other working capital assets. The co-borrowers under the New Credit Facility must prepay any amounts outstanding under the New Credit Facility in excess of the borrowing base (up to the maximum availability amount). Borrowings under the New Credit Facility will be available to fund expansions, acquisitions and working capital requirements for the Company’s operations and general corporate purposes, including member distributions.

At the Company’s election, interest will be generally determined by reference to: (a) the Eurodollar rate plus an applicable margin of up to 3.0% per annum (based upon the prevailing utilization); (b) the alternate base rate plus an applicable margin of up to 2.0% per annum (based upon the prevailing utilization); or (c) the rate quoted by Société Générale as its cost of funds for the requested credit plus 2.25%-2.50% per annum. The interest rate is generally reduced by 25 basis points if utilization under the New Credit Facility is below fifty percent. The New Credit Facility allows the Company to issue letters of credit, which reduce availability under New Credit Facility, at a cost of 2.00%-2.50% per annum of aggregate letters of credit issued.

The Company will pay an annual commitment fee of 0.375% or 0.5% on the unused portion of the New Credit Facility depending upon the unused capacity. The lending syndicate under the New Credit Facility is entitled to several additional fees including an upfront fee, annual agency fee, and fronting fees based on a percentage of the face amount of letters of credit payable to any syndicate member that issues a letter of credit. The New Credit Facility is secured by the capital stock of SE, SEG and the co-borrowers present and future subsidiaries, all of the co-borrowers and their subsidiaries' present and future property and assets, including accounts receivable, inventory and liquid investments, and control agreements relating to bank accounts.

The New Credit Facility also contains covenants that, among other things, will require the maintenance of specified ratios or conditions as follows: (a) the Company must maintain a consolidated maximum senior secured leverage ratio, consisting of total liabilities to tangible net worth of not more than 7.0 to 1.0, as of the last day of each month; (b) the Company must maintain minimum consolidated net working capital at all times equal to the greater of (i) 20% of the aggregate commitments under the New Credit Facility, and (ii) \$12,000,000; and (c) the Company must maintain a minimum consolidated tangible net worth at all times equal to the net book value of property, plant and equipment as of the closing date of the New Credit Facility plus the greater of (i) 20% of aggregate commitments under the New Credit Facility and (ii) \$12,000,000.

In addition, the New Credit Facility contains customary affirmative covenants. The covenants include delivery of financial statements and other information (including any filings made with the SEC), maintenance of property and insurance, maintenance by the Company of holding company status, payment of taxes and obligations, material compliance with laws, inspection of property, books and records and audits, use of proceeds, payments to bank blocked accounts, notice of defaults and certain other customary matters. The New Credit Facility also contains additional negative covenants that will limit the Company's ability to, among other things, do any of the following: (a) incur certain additional indebtedness; (b) grant certain liens; (c) engage in certain asset dispositions; (d) merge or consolidate; (e) make certain payments, distributions, investments, acquisitions or loans; (f) enter into transactions with affiliates; (f) make certain changes in lines of business or accounting practices, except as required by United States generally accepted accounting principles or its successor; (g) store inventory in certain locations; (h) place certain amounts of cash in accounts not subject to control agreements; (i) amend or modify billing services agreements and documents; (j) amend or modify risk management and credit policies; (k) engage in certain prohibited transactions; (l) enter into burdensome agreements; and (m) act as a transmitting utility or as a utility. Certain of the negative covenants listed above are subject to certain permitted exceptions and allowances.

The Company will be entitled to pay cash dividends to the holders of the Class A Common Stock and Spark HoldCo will be entitled to make cash distributions to NuDevco Retail Holdings and NuDevco Retail and the Company so long as: (a) no default exists or would result from such a payment; (b) the co-borrowers are in pro forma compliance with all financial covenants before and after giving effect to such payment; and (c) the outstanding amount of all loans and letters of credit does not exceed the borrowing base limits. Spark HoldCo's inability to satisfy certain financial covenants or the existence of an event of default, if not cured or waived, under the New Facility could prevent the Company from paying dividends to holders of its Class A Common Stock.

The New Credit Facility contains certain customary representations and warranties and events of default. Events of default include, among other things, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults and cross-acceleration to certain indebtedness, certain events of bankruptcy, certain events under the Employee Retirement Income Security Act of 1974, as amended, material judgments in excess of \$2.5 million, certain events with respect to material contracts, actual or asserted failure of any guaranty or security document supporting the New Credit Facility to be in full force and effect and changes of control. If such an event of default occurs, the lenders under the New Credit Facility would be entitled to take various actions, including the acceleration of amounts due under the facility and all actions permitted to be taken by a secured creditor.

The foregoing description is qualified in its entirety by reference to the full text of the New Credit Facility, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Tax Receivable Agreement

On August 1, 2014, in connection with the closing of the Offering, the Company entered into the Tax Receivable Agreement (the “Tax Receivable Agreement”), by and among the Company, NuDevco Retail Holdings, NuDevco Retail and W. Keith Maxwell III. The Tax Receivable Agreement generally provides for the payment by the Company to NuDevco Retail and NuDevco Retail Holdings of 85% of the net cash savings, if any, in U.S. federal, state and local income tax or franchise tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the Offering as a result of: (i) any tax basis increases resulting from the purchase by the Company of Spark HoldCo Units from NuDevco Retail Holdings prior to or in connection with the Offering, (ii) the tax basis increases resulting from the exchange of Spark HoldCo Units for shares of Class A Common Stock pursuant to the Exchange Right (as defined in the Tax Receivable Agreement) (or resulting from an exchange of Spark HoldCo Units for cash pursuant to the Cash Option (as defined in the Tax Receivable Agreement)) and (iii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, any payments the Company makes under the Tax Receivable Agreement.

The payment obligations under the Tax Receivable Agreement are the Company’s obligations and not obligations of Spark HoldCo. For purposes of the Tax Receivable Agreement, cash savings in tax generally are calculated by comparing the Company’s actual tax liability to the amount the Company would have been required to pay had the Company not been able to utilize any of the tax benefits subject to the Tax Receivable Agreement. The term of the Tax Receivable Agreement commenced upon the completion of the Offering and will continue until all such tax benefits have been utilized or have expired, unless Spark HoldCo exercises its right to terminate the Tax Receivable Agreement.

In certain circumstances, the Company may be required to defer or partially defer any payment due to the holders of rights under the Tax Receivable Agreement. As described in the Prospectus, no Tax Receivable Agreement Payment will be made during 2014, and any future Tax Receivable Agreement Payments due with respect to a given taxable year are expected to be paid in December of the subsequent calendar year. During the five-year period commencing October 1, 2014, the Company will defer all or a portion of any Tax Receivable Agreement Payment (the “TRA Payment”) owed pursuant to the Tax Receivable Agreement to the extent that Spark HoldCo does not generate sufficient Cash Available for Distribution (as defined below) during the four-quarter period ending September 30th of the applicable year in which the TRA Payment is to be made in an amount that equals or exceeds 130% (the “TRA Coverage Ratio”) of the Total Distributions (as defined below) paid in such four-quarter period by Spark HoldCo. For purposes of computing the TRA Coverage Ratio: (a) “Cash Available for Distribution” is generally defined as the Adjusted EBITDA of Spark HoldCo for the applicable period, less (i) cash interest paid by Spark HoldCo, (ii) capital expenditures of Spark HoldCo (exclusive of customer acquisition costs) and (iii) any taxes payable by Spark HoldCo; and (b) “Total Distributions” are defined as the aggregate distributions necessary to cause the Company to receive distributions of cash equal to (i) the targeted quarterly distribution the Company intends to pay to holders of Class A Common Stock payable during the applicable four-quarter period, plus (ii) the estimated taxes payable by the Company during such four-quarter period, plus (iii) the expected TRA Payment payable during the calendar year for which the TRA Coverage Ratio is being tested.

In the event that the TRA Coverage Ratio is not satisfied in any calendar year, the Company will defer all or a portion of the TRA Payment to NuDevco Retail or NuDevco Retail Holdings under the Tax Receivable Agreement to the extent necessary to permit Spark HoldCo to satisfy the TRA Coverage Ratio (and Spark HoldCo is not required to make and will not make the pro rata distributions to its members with respect to the deferred portion of the TRA Payment). If the TRA Coverage Ratio is satisfied in any calendar year, the Company will pay NuDevco Retail or NuDevco Retail Holdings the full amount of the TRA Payment. Following the five-year deferral period, the Company will be obligated to pay any outstanding deferred TRA Payments (x) to the extent such deferred TRA Payments do not exceed (i) the lesser of the Company’s proportionate share of aggregate Cash Available for Distribution of Spark HoldCo during the five-year deferral period or the cash distributions actually received by the Company during the five-year deferral period, reduced by (ii) the sum of (a) the aggregate target quarterly dividends (which, for the purposes of the Tax Receivable Agreement, will be \$0.3625 per share per quarter) during the five-year deferral period, (b) the Company’s estimated taxes during the five-year deferral period, and (c) all prior TRA Payments and (y) if with respect to the quarterly period during which the deferred TRA Payment is otherwise paid or payable, Spark HoldCo has or reasonably determines it will have amounts necessary to cause the Company to receive distributions of cash equal to the target quarterly distribution payable during that quarterly period. Any portion of the deferred TRA Payments not payable due to these limitations will no longer be payable.

The Tax Receivable Agreement provides that in the event that the Company breaches any of its material obligations, whether as a result of (i) its failure to make any payment when due (including in cases where it elects to terminate the Tax Receivable Agreement early, the Tax Receivable Agreement is terminated early due to certain mergers or other changes of control or the Company has available cash but fails to make payments when due under circumstances where it does not have the right to elect to defer the payment, as described below), (ii) the Company's failure to honor any other material obligation under it, including the restriction on its ability to make distributions to holders of Class A Common Stock in excess of the initial targeted quarterly distribution while any TRA Payment is due and payable but unpaid, or (iii) by operation of law as a result of the rejection of the Tax Receivable Agreement in a case commenced under the United States Bankruptcy Code or otherwise, then all payment and other obligations under the Tax Receivable Agreement will be accelerated and will become due and payable applying the same assumptions described above.

Additionally, the Company has the right to terminate the Tax Receivable Agreement. If the Company elects to terminate the Tax Receivable Agreement early or it is terminated early due to certain mergers or other changes of control, the Company would be required to make an immediate payment equal to the present value of the anticipated future tax benefits subject to the Tax Receivable Agreement, which calculation of anticipated future tax benefits will be based upon certain assumptions and deemed events set forth in the Tax Receivable Agreement, including the assumption that the Company has sufficient taxable income to fully utilize such benefits and that any Spark HoldCo Units that NuDevco Retail Holdings or NuDevco Retail or its permitted transferees own on the termination date are deemed to be exchanged on the termination date. Any early termination payment may be made significantly in advance of the actual realization, if any, of such future benefits and significantly exceed the Company's realized tax savings.

Payments are generally due under the Tax Receivable Agreement within 30 days following the finalization of the schedule with respect to which the payment obligation is calculated, although interest on such payments will begin to accrue from the due date (without extensions) of such tax return until the payment is made at a rate equal to the one-year LIBOR rate plus 200 basis points. Except in cases where the Company elects to terminate the Tax Receivable Agreement early, the Tax Receivable Agreement is terminated early due to certain mergers or other changes of control or the Company has available cash but fails to make payments when due, generally the Company may elect to defer payments due under the Tax Receivable Agreement if it does not have available cash to satisfy its payment obligations under the Tax Receivable Agreement or if its contractual obligations limit its ability to make these payments. Any such deferred payments under the Tax Receivable Agreement generally will accrue interest at a rate equal to the one-year LIBOR rate plus 500 basis points; provided, however, that interest will accrue at a rate equal to the one-year LIBOR rate plus 200 basis points if the Company is unable to make such payment as a result of limitations imposed by existing credit agreements. In addition, as described above, the Company may be required to defer or partially defer payments under the Tax Receivable Agreement in certain circumstances during the five-year period commencing on October 1, 2014.

The foregoing description is not complete and is qualified in its entirety by reference to the full text of the Tax Receivable Agreement, which is attached as Exhibit 10.2 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Spark HoldCo, LLC Second Amended and Restated Limited Liability Agreement

On August 1, 2014, in connection with the closing of the Offering, the Company entered into the Spark HoldCo LLC Agreement by and among the Company, Spark HoldCo, NuDevco Retail Holdings and NuDevco Retail. In accordance with the terms of the Spark HoldCo LLC Agreement, NuDevco Retail Holdings and NuDevco Retail will generally have the right to exchange their Spark HoldCo Units (and a corresponding number of shares of the Company's Class B Common Stock) for shares of the Company's Class A Common Stock at an exchange ratio of one share of Class A Common Stock for each Spark HoldCo Unit (and corresponding share of Class B Common Stock) exchanged, subject to conversion rate adjustments for stock splits, stock dividends and reclassifications. At Spark HoldCo's option, Spark HoldCo may give NuDevco Retail Holdings or NuDevco Retail cash in an amount equal to the Cash Election Amount (as defined below) of the shares of Class A Common Stock. The Company is obligated to facilitate an exchange for shares of Class A Common Stock through a contribution of shares of Class A

Common Stock to Spark HoldCo LLC or, alternatively, the Company has the right to acquire the subject Spark HoldCo Units and corresponding shares of Class B Common Stock from NuDevco Retail Holdings and NuDevco Retail by paying, at its option, either (x) the number of shares of Class A Common Stock NuDevco Retail Holdings or NuDevco Retail would have received in the proposed exchange or (y) cash in an amount equal to the Cash Election Amount of such shares of Class A Common Stock. "Cash Election Amount" means, with respect to the shares of Class A Common Stock to be delivered to NuDevco Retail Holdings or NuDevco Retail by Spark HoldCo pursuant to the Spark HoldCo LLC Agreement, (i) if the Company's Class A Common Stock is then admitted to trading on a national securities exchange, the amount that would be received if the number of shares of Class A Common Stock to which NuDevco Retail Holdings or NuDevco Retail would otherwise be entitled were sold at a per share price equal to the trailing 30-day volume weighted average price of a share of Class A Common Stock on such exchange, or (ii) in the event shares of Class A Common Stock are not then admitted to trading on a national securities exchange, the value that would be obtained in an arm's length transaction for cash between an informed and willing buyer and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, and without regard to the particular circumstances of the buyer and the seller, as determined by the Company. As NuDevco Retail Holdings and NuDevco Retail exchange their Spark HoldCo Units, the Company's membership interest in Spark HoldCo will be correspondingly increased, and the number of shares of Class B Common Stock held by NuDevco will be correspondingly reduced.

Under the Spark HoldCo LLC Agreement, the Company has the right to determine when distributions will be made to the holders of Spark HoldCo Units and the amount of any such distributions. If the Company authorizes a distribution, such distribution will be made to the holders of Spark HoldCo Units on a pro rata basis in accordance with their respective percentage ownership of Spark HoldCo Units. The Spark HoldCo LLC Agreement provides, to the extent Spark HoldCo has available cash and is not prevented by restrictions in any of its credit agreements, for distributions pro rata to the holders of Spark HoldCo Units such that the Company receives an amount of cash sufficient to fund the targeted quarterly dividend the Company intends to pay to holders of its Class A Common Stock and payments under the Tax Receivable Agreement.

The Spark HoldCo LLC Agreement provides that, except as otherwise determined by the Company, at any time the Company issues a share of its Class A Common Stock or any other equity security, the net proceeds received by it with respect to such issuance, if any, shall be concurrently invested in Spark HoldCo, and Spark HoldCo shall issue to the Company one Spark HoldCo Unit or other economically equivalent equity interest. Conversely, if at any time, any shares of the Company's Class A Common Stock are redeemed, repurchased or otherwise acquired, Spark HoldCo shall redeem, repurchase or otherwise acquire an equal number of Spark HoldCo Units held by the Company, upon the same terms and for the same price, as the shares of the Company's Class A Common Stock are redeemed, repurchased or otherwise acquired.

Spark HoldCo will be dissolved only upon the first to occur of (i) the sale of substantially all of its assets or (ii) an election by the Company to dissolve Spark HoldCo. Upon dissolution, Spark HoldCo will be liquidated and the proceeds from any liquidation will be applied and distributed in the following manner: (a) first, to creditors (including to the extent permitted by law, creditors who are members) in satisfaction of the liabilities of Spark HoldCo, (b) second, to establish cash reserves for contingent or unforeseen liabilities and (c) third, to its members in proportion to the number of Spark HoldCo Units owned by each of them.

The Spark HoldCo LLC Agreement also provides that Spark HoldCo will pay certain of the Company's expenses attributable to its status as a public company. Such expenses include, but are not limited to, accounting and legal fees, independent director compensation, director and officer liability insurance expense, Sarbanes-Oxley compliance, transfer agent and registrar fees, tax return preparation, investor relations expense, SEC and NASDAQ compliance fees and the fees and expenses of other service providers that provide services to the Company in connection with its obligations as a publicly-traded company.

The foregoing description is qualified in its entirety by reference to the full text of the Spark HoldCo LLC Agreement, which is filed as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated in this Item 1.01 by reference.

Registration Rights Agreement

On August 1, 2014, in connection with the closing of the Offering, the Company entered into a Registration Rights Agreement (the "Registration Rights Agreement") by and among the Company, NuDevco Retail Holdings and NuDevco Retail. The Registration Rights Agreement contains provisions by which the Company has agreed to register under the federal securities laws the sale of any shares of its Class A Common Stock received by NuDevco Retail Holdings or NuDevco Retail or certain of their affiliates pursuant to the Exchange Right. These registration rights are subject to certain conditions and limitations. The Company is generally obligated to pay all registration expenses in connection with these registration obligations, regardless of whether a registration statement is filed or becomes effective.

The foregoing description is qualified in its entirety by reference to the full text of the Registration Rights Agreement, which is filed as Exhibit 10.4 to this Current Report on Form 8-K and is incorporated in this Item 1.01 by reference.

Indemnification Agreements

In connection with the closing of the Offering, the Company entered into indemnification agreements with each of its directors and executive officers. These agreements require the Company to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Company, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. The Company believes that the limitation of liability provision that is in its amended and restated certificate of incorporation and the indemnification agreements will facilitate the Company's ability to continue to attract and retain qualified individuals to serve as directors and officers.

The foregoing description is qualified in its entirety by reference to the full text of the Indemnification Agreements, which are filed as Exhibits 10.5-10.12 to this Current Report on Form 8-K and are incorporated in this Item 1.01 by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The description of the Transaction Agreement provided above under Item 1.01 is incorporated in this Item 2.01 by reference. A copy of the Transaction Agreement is attached as Exhibit 4.1 and is incorporated in this Item 2.01 by reference.

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

The description of the New Credit Facility provided above under Item 1.01 is incorporated in this Item 2.03 by reference. A copy of the New Credit Facility is attached as Exhibit 10.1 and is incorporated in this Item 2.03 by reference.

Item 3.02 Unregistered Sales of Equity Securities.

On August 1, 2014, in connection with the closing of the Offering, the Company issued 10,750,000 shares of its Class B Common Stock in connection with the consummation of the transactions contemplated by the Transaction Agreement. The foregoing transaction was undertaken in reliance upon the exemption from the registration requirements of the Securities Act by Section 4(a)(2) thereof.

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

Election of Directors

In connection with the offering, James G. Jones II, John Eads and Kenneth M. Hartwick were elected to the board of directors of the Company (the "Board"), effective as of July 29, 2014. There are no arrangements or understandings between Messrs. Jones, Eads or Hartwick and any other person pursuant to which they were elected as directors.

There are no relationships between Messrs. Jones, Eads or Hartwick and the Company or any of its subsidiaries that would require disclosure pursuant to Item 404(a) of Regulation S-K. As described above, the Company entered into indemnification agreements with each of its directors, including Messrs. Jones, Eads and Hartwick. The indemnification agreements of Messrs. Jones, Eads and Hartwick are attached hereto as Exhibits 10.10 through 10.12 and are incorporated in this Item 5.02 by reference.

Long-Term Incentive Plan

The Company's Board previously adopted and established the Spark Energy, Inc. Long-Term Incentive Plan (the "LTIP") for the employees, consultants and the directors of the Company and its affiliates who perform services for the Company. The LTIP allows for the provision of grants of: (i) incentive stock options qualified as such under U.S. federal income tax laws; (ii) stock options that do not qualify as incentive stock options; (iii) restricted stock awards; (iv) restricted stock units; (v) bonus stock; (vi) performance awards; and (vii) annual incentive awards. The compensation committee of the Board administers the LTIP. The maximum aggregate number of shares of common stock that may be issued pursuant to any and all awards under the LTIP shall not exceed 1,375,000 shares, subject to adjustment due to recapitalization or reorganization, or related to forfeitures or the expiration of awards, as provided under the LTIP. The administrator of the LTIP, at its discretion, may terminate the LTIP at any time with respect to the shares for which a grant has not previously been made. The LTIP automatically terminates on the tenth anniversary of the date it was initially adopted by the Company.

The foregoing description of the LTIP is qualified in its entirety by reference to the full text of the LTIP, which is incorporated by reference as Exhibit 10.13 to this Current Report on Form 8-K and incorporated in this Item 5.02 by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year.

Amended and Restated Certificate of Incorporation of Spark Energy, Inc.

On August 1, 2014, in connection with the closing of the Offering, the Company amended and restated its certificate of incorporation. The Amended and Restated Certificate was filed with the Secretary of State of the State of Delaware on August 1, 2014. A description of the Amended and Restated Certificate is contained in the section of the Prospectus entitled "Description of Capital Stock" and is incorporated herein by reference.

The foregoing description and the description contained in the Prospectus are qualified in their entirety by reference to the full text of the Amended and Restated Certificate, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated in this Item 5.03 by reference.

Amended and Restated Bylaws of Spark Energy, Inc.

On August 1, 2014, in connection with the closing of the Offering, the Company adopted amended and restated bylaws (as amended, the "Restated Bylaws"). A description of the Restated Bylaws is contained in the section of the Prospectus entitled "Description of Capital Stock" and is incorporated herein by reference.

The foregoing description and the description contained in the Prospectus are qualified in their entirety by reference to the full text of the Restated Bylaws, which is filed as Exhibit 3.2 to this Current Report on Form 8-K and is incorporated in this Item 5.03 by reference.

Spark HoldCo, LLC Second Amended and Restated Limited Liability Agreement

This description of the Spark HoldCo LLC Agreement provided above under Item 1.01 is incorporated in this Item 5.03 by reference. A copy of the Spark HoldCo LLC Agreement is attached as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated in this Item 5.03 by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Certificate of Incorporation of Spark Energy, Inc.
3.2	Amended and Restated Bylaws of Spark Energy, Inc.
4.1	Transaction Agreement II, dated as of July 30, 2014, by and among Spark Energy, Inc., Spark HoldCo, LLC, NuDevco Retail LLC, NuDevco Retail Holdings, LLC, Spark Energy Ventures, LLC, NuDevco Partners Holdings, LLC and Associated Energy Services, LP.
10.1	Credit Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., as parent, Spark HoldCo, LLC, Spark Energy, LLC, and Spark Energy Gas, LLC, as co-borrowers, SG Americas Securities, LLC, as sole lead arranger and sole bookrunner, Natixis, New York Branch, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., New York Branch, and RB International Finance (USA) LLC, as co-documentation agent and Compass Bank, as senior managing agent.
10.2	Tax Receivable Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., NuDevco Retail Holdings, LLC, NuDevco Retail, LLC and W. Keith Maxwell III.
10.3	Spark HoldCo, LLC Second Amended and Restated Limited Liability Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., NuDevco Retail Holdings and NuDevco Retail.
10.4	Registration Rights Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., NuDevco Retail Holdings and NuDevco Retail.
†10.5	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and W. Keith Maxwell III.
†10.6	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Nathan Kroeker.
†10.7	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Allison Wall.
†10.8	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Georganne Hodges.
†10.9	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Gil Melman.
†10.10	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and James G. Jones II.
†10.11	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and John Eads.
†10.12	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Kenneth M. Hartwick.
†10.13	Spark Energy, Inc. Long-Term Incentive Plan (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-8 (File No. 333-197738) filed with the SEC on July 31, 2014).

† Compensatory plan or arrangement.

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.

Spark Energy, Inc.

By: /s/ Gil Melman

Name: Gil Melman

Title: Vice President, General Counsel and Corporate Secretary

Dated: August 4, 2014

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Certificate of Incorporation of Spark Energy, Inc.
3.2	Amended and Restated Bylaws of Spark Energy, Inc.
4.1	Transaction Agreement II, dated as of July 30, 2014, by and among Spark Energy, Inc., Spark HoldCo, LLC, NuDevco Retail LLC, NuDevco Retail Holdings, LLC, Spark Energy Ventures, LLC, NuDevco Partners Holdings, LLC and Associated Energy Services, LP.
10.1	Credit Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., as parent, Spark HoldCo, LLC, Spark Energy, LLC, and Spark Energy Gas, LLC, as co-borrowers, SG Americas Securities, LLC, as sole lead arranger and sole bookrunner, Natixis, New York Branch, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., New York Branch, and RB International Finance (USA) LLC, as co-documentation agent and Compass Bank, as senior managing agent.
10.2	Tax Receivable Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., NuDevco Retail Holdings, LLC, NuDevco Retail, LLC and W. Keith Maxwell III.
10.3	Spark HoldCo, LLC Second Amended and Restated Limited Liability Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., NuDevco Retail Holdings and NuDevco Retail.
10.4	Registration Rights Agreement, dated as of August 1, 2014, by and among Spark Energy, Inc., NuDevco Retail Holdings and NuDevco Retail.
†10.5	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and W. Keith Maxwell III.
†10.6	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Nathan Kroeker.
†10.7	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Allison Wall.
†10.8	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Georganne Hodges.
†10.9	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and Gil Melman.
†10.10	Indemnification Agreement, dated August 1, 2014, by and between Spark Energy, Inc. and James G. Jones II.
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† Compensatory plan or arrangement.

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SPARK ENERGY, INC.

Spark Energy, Inc. (the “Corporation”), a corporation organized and existing under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the “DGCL”), hereby certifies as follows:

1. The original Certificate of Incorporation of the Corporation (the “Original Certificate of Incorporation”) was filed with the Secretary of State of the State of Delaware on April 22, 2014.

2. This Amended and Restated Certificate of Incorporation (this “Amended and Restated Certificate of Incorporation”), which restates and amends the Original Certificate of Incorporation, has been declared advisable by the board of directors of the Corporation (the “Board”), duly adopted by the stockholders of the Corporation and duly executed and acknowledged by the officers of the Corporation in accordance with Sections 103, 228, 242 and 245 of the DGCL.

3. The Original Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is Spark Energy, Inc.

SECOND: The address of its registered office in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 in New Castle County, Delaware. The name of its registered agent at such address is Corporation Service Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL as it currently exists or may hereafter be amended.

FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is 200,000,000 shares of stock, classified as (i) 20,000,000 shares of preferred stock, par value \$0.01 per share (“Preferred Stock”), (ii) 120,000,000 shares of Class A common stock, par value \$0.01 per share (“Class A Common Stock”), and (iii) 60,000,000 shares of Class B common stock, par value \$0.01 per share (“Class B Common Stock”) and, together with the Class A Common Stock, the “Common Stock”).

1. Provisions Relating to Preferred Stock.

(a) Preferred Stock may be issued from time to time in one or more classes or series, the shares of each series to have such designations and powers, preferences and rights, and qualifications, limitations and restrictions thereof, as are stated and expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board as hereafter prescribed (a “Preferred Stock Designation”).

(b) Authority is hereby expressly granted to and vested in the Board to authorize the issuance of Preferred Stock from time to time in one or more classes or series, and with respect to each series of Preferred Stock, to fix and state by the resolution or resolutions from time to time adopted by the Board providing for the issuance thereof the designation and the powers, preferences, rights, qualifications, limitations and restrictions relating to each series of Preferred Stock, including, but not limited to, the following:

(i) whether or not the series is to have voting rights, full, special or limited, or is to be without voting rights, and whether or not such series is to be entitled to vote as a separate class either alone or together with the holders of one or more other classes or series of stock;

(ii) the number of shares to constitute the series and the designations thereof;

(iii) the preferences, and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to any series;

(iv) whether or not the shares of any series shall be redeemable at the option of the Corporation or the holders thereof or upon the happening of any specified event, and, if redeemable, the redemption price or prices (which may be payable in the form of cash, notes, securities or other property), and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;

(v) whether or not the shares of a series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and, if such retirement or sinking fund or funds are to be established, the annual amount thereof, and the terms and provisions relative to the operation thereof;

(vi) the dividend rate, whether dividends are payable in cash, stock of the Corporation or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of dividends payable on any other class or classes or series of stock, whether or not such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;

(vii) the preferences, if any, and the amounts thereof which the holders of any series thereof shall be entitled to receive upon the voluntary or involuntary liquidation, dissolution or winding up of, or upon any distribution of the assets of, the Corporation;

(viii) whether or not the shares of any series, at the option of the Corporation or the holder thereof or upon the happening of any specified event, shall be convertible into or exchangeable for, the shares of any other class or classes or of any other series of the same or any other class or classes of stock, securities or other property of the Corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and

(ix) such other powers, preferences, rights, qualifications, limitations and restrictions with respect to any series as may to the Board seem advisable.

(c) The shares of each series of Preferred Stock may vary from the shares of any other series thereof in any or all of the foregoing respects.

2. Provisions Relating to Common Stock.

(a) Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, each share of Common Stock shall have identical rights and privileges in every respect. Common Stock shall be subject to the express terms of Preferred Stock and any series thereof. Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, in a Preferred Stock Designation or by applicable law, the holders of shares of Common Stock shall be entitled to one vote for each such share upon all questions presented to the stockholders, the holders of shares of Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, and the holders of Preferred Stock shall not be entitled to vote at or receive notice of any meeting of stockholders. Each holder of Common Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law on all matters put to a vote of the stockholders of the Corporation. Except as otherwise required in this Amended and Restated Certificate of Incorporation or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, the holders of Common Stock and the Preferred Stock shall vote together as a single class).

(b) Notwithstanding the foregoing, except as otherwise required by applicable law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

(c) Subject to the prior rights and preferences, if any, applicable to shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive ratably in proportion to the number of shares of Class A Common Stock held by them such dividends and distributions (payable in cash, stock or otherwise), if any, as may be declared thereon by the Board at any time and from time to time out of any funds of the

Corporation legally available therefor. Dividends and other distributions shall not be declared or paid on the Class B Common Stock unless (i) the dividend consists of shares of Class B Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable for shares of Class B Common Stock paid proportionally with respect to each outstanding share of Class B Common Stock and (ii) a dividend consisting of shares of Class A Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable for shares of Class A Common Stock on equivalent terms is simultaneously paid to the holders of Class A Common Stock. If dividends are declared on the Class A Common Stock or the Class B Common Stock that are payable in shares of Common Stock, or securities convertible into, or exercisable or exchangeable for Common Stock, the dividends payable to the holders of Class A Common Stock shall be paid only in shares of Class A Common Stock (or securities convertible into, or exercisable or exchangeable for Class A Common Stock), the dividends payable to the holders of Class B Common Stock shall be paid only in shares of Class B Common Stock (or securities convertible into, or exercisable or exchangeable for Class B Common Stock), and such dividends shall be paid in the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively (or securities convertible into, or exercisable or exchangeable for the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively). In no event shall the shares of either Class A Common Stock or Class B Common Stock be split, divided, or combined unless the outstanding shares of the other class shall be proportionately split, divided or combined.

(d) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Class A Common Stock held by them. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. A dissolution, liquidation or winding-up of the Corporation, as such terms are used in this paragraph (d), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange or conveyance of all or a part of the assets of the Corporation

(e) Shares of Class B Common Stock shall be exchangeable for shares of Class A Common Stock on the terms and subject to the conditions set forth in the Second Amended and Restated Limited Liability Agreement of Spark HoldCo, LLC dated as of August 1, 2014, (the “LLC Agreement”). The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of issuance upon exchange of the outstanding shares of Class B Common Stock for Class A Common Stock pursuant to the LLC Agreement, such number of shares of Class A Common Stock that shall be issuable upon any such exchange pursuant to the LLC Agreement; provided that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such exchange of shares of Class B Common Stock pursuant to the LLC Agreement by delivering to the holder of shares of Class B Common Stock upon such exchange, cash in lieu of shares of Class A Common Stock in the amount permitted by and

provided in the LLC Agreement or shares of Class A Common Stock which are held in the treasury of the Corporation. All shares of Class A Common Stock that shall be issued upon any such exchange will, upon issuance in accordance with the LLC Agreement, be validly issued, fully paid and non-assessable. All shares of Class B Common Stock exchanged shall be cancelled.

(f) The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of either Common Stock or Preferred Stock voting separately as a class shall be required therefor.

(g) No stockholder shall, by reason of the holding of shares of any class or series of capital stock of the Corporation, have any preemptive or preferential right to acquire or subscribe for any shares or securities of any class, whether now or hereafter authorized, which may at any time be issued, sold or offered for sale by the Corporation, unless specifically provided for in the terms of a series of Preferred Stock.

FIFTH: The business and affairs of the Corporation shall be managed by or under the direction of the Board. The directors, other than those who may be elected by the holders of any series of Preferred Stock specified in the related Preferred Stock Designation, shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as is reasonably possible, with the initial term of office of the first class to expire at the 2015 annual meeting (the "Class I Directors"), the initial term of office of the second class to expire at the 2016 annual meeting (the "Class II Directors"), and the initial term of office of the third class to expire at the 2017 annual meeting (the "Class III Directors"), with each director to hold office until his successor shall have been duly elected and qualified. At each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his successor shall have been duly elected and qualified. The Board is authorized to assign members of the Board already in office to Class I, Class II or Class III at the time such classification becomes effective. Subject to applicable law and the rights of the holders of any series of Preferred Stock, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled solely by the affirmative vote of a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall hold office for the remaining term of his predecessor. No decrease in the number of authorized directors constituting the Board shall shorten the term of any incumbent director.

Subject to the rights of the holders of shares of any series of Preferred Stock, if any, to elect additional directors pursuant to this Amended and Restated Certificate of Incorporation (including any Preferred Stock Designation thereunder), any director may be removed, with or without cause, upon the affirmative vote of the holders of at least 66 ²/₃ % of the outstanding

shares of stock of the Corporation entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent (if permitted) in accordance with the DGCL, this Amended and Restated Certificate of Incorporation and the bylaws of the Corporation.

Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, if any, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Board. Unless and except to the extent that the bylaws of the Corporation so provide, the election of directors need not be by written ballot. There shall be no cumulative voting in the election of directors.

SIXTH: Prior to the first date (the “Trigger Date”) upon which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifty percent (50%) of the outstanding Common Stock of the Corporation, and subject to the rights of holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken at any annual meeting or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, is or are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. On and after the Trigger Date, any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent in writing of such stockholders.

SEVENTH: Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of stockholders of the Corporation may be called only by the Chief Executive Officer, the Chairman of the Board or the Board pursuant to a resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies; *provided, however*, that prior to the Trigger Date, special meetings of the stockholders of the Corporation may also be called by the Secretary of the Corporation at the request of the holders of record of more than 50% of the outstanding shares of Common Stock. On and after the Trigger Date, and subject to the rights of holders of any series of Preferred Stock, the stockholders of the Corporation do not have the power to call a special meeting of stockholders of the Corporation.

EIGHTH: In furtherance of, and not in limitation of, the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend or repeal the bylaws of the Corporation without any action on the part of the stockholders of the Corporation; *provided* that any bylaw adopted or amended by the Board, and any powers thereby conferred, may be amended, altered or repealed by the stockholders of the Corporation by the vote of holders of not less than 66 ²/₃ % in voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class. No bylaws hereafter made or adopted, nor any repeal of or amendment thereto, shall invalidate any prior act of the Board that was valid at the time it was taken.

NINTH: No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as it now

exists. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the preceding sentence, a director of the Corporation shall not be liable to the fullest extent permitted by any amendment to the DGCL hereafter enacted that further limits the liability of a director.

Any amendment, repeal or modification of this Article Ninth shall be prospective only and shall not affect any limitation on liability of a director for acts or omissions occurring prior to the date of such amendment, repeal or modification.

TENTH: To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, any business opportunities that are from time to time presented to NuDevco Partners, LLC, NuDevco Partners Holdings, LLC and W. Keith Maxwell III (collectively, the “Sponsors”) or any of their respective affiliates or any of their respective agents, shareholders, members, partners, directors, officers, employees, affiliates or subsidiaries (other than the Corporation and its subsidiaries), including any director or officer of the Corporation who is also an agent, shareholder, member, partner, director, officer, employee, affiliate or subsidiary of any Sponsor (each, a “Business Opportunities Exempt Party”), even if the business opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and no Business Opportunities Exempt Party shall have any duty to communicate or offer any such business opportunity to the Corporation or be liable to the Corporation or any of its subsidiaries or any stockholder, including for breach of any fiduciary or other duty, as a director or officer or controlling stockholder or otherwise, and the Corporation shall indemnify each Business Opportunities Exempt Party against any claim that such person is liable to the Corporation or its stockholders for breach of any fiduciary duty, by reason of the fact that such person (i) participates in, pursues or acquires any such business opportunity, (ii) directs any such business opportunity to another person or (iii) fails to present any such business opportunity, or information regarding any such business opportunity, to the Corporation or its subsidiaries, unless, in the case of a person who is a director or officer of the Corporation, such business opportunity is expressly offered to such director or officer in writing solely in his capacity as a director or officer of the Corporation.

Neither the amendment nor repeal of this Article Tenth, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation, nor, to the fullest extent permitted by Delaware law, any modification of law, shall eliminate, reduce or otherwise adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

If any provision or provisions of this Article Tenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Tenth (including, without limitation, each portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable that is not itself

held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Tenth (including, without limitation, each such portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by applicable law.

This Article Tenth shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation or applicable law. Any person or entity purchasing or otherwise acquiring any interest in any securities of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article Tenth.

ELEVENTH: Prior to the first date (the “Section 203 Trigger Date”) upon which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifteen percent (15%) of the outstanding Common Stock of the Corporation, the provisions of Section 203 of the DGCL shall not be applicable to the Corporation. On and after the Section 203 Trigger Date, the provisions of Section 203 of the DGCL shall be applicable to the Corporation.

TWELFTH: The Corporation shall have the right, subject to any express provisions or restrictions contained in this Amended and Restated Certificate of Incorporation or bylaws of the Corporation, from time to time, to amend this Amended and Restated Certificate of Incorporation or any provision hereof in any manner now or hereafter provided by applicable law, and all rights and powers of any kind conferred upon a director or stockholder of the Corporation by this Amended and Restated Certificate of Incorporation or any amendment hereof are subject to such right of the Corporation.

THIRTEENTH: Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation (and in addition to any other vote that may be required by applicable law, this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation), the affirmative vote of the holders of at least 66 ²/₃ % in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation.

FOURTEENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Corporation’s bylaws, or (iv) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation governed by the internal affairs doctrine, in each

such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article Fourteenth.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation as of this 1st day of August, 2014.

SPARK ENERGY, INC.

By: /s/ Nathan Kroeker

Name: Nathan Kroeker

Title: Chief Executive Officer and President

[*Signature Page to Amended and Restated Certificate of Incorporation*]

AMENDED AND RESTATED BYLAWS**OF****SPARK ENERGY, INC.**

Incorporated under the Laws of the State of Delaware

Date of Adoption: August 1, 2014

**ARTICLE I
OFFICES AND RECORDS**

SECTION 1.1. Registered Office. The registered office of Spark Energy, Inc. (the “Corporation”) in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, and the name of the Corporation’s registered agent at such address is Corporation Service Company. The registered office and registered agent of the Corporation may be changed from time to time by the board of directors of the Corporation (the “Board”) in the manner provided by applicable law.

SECTION 1.2. Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the Board may designate or as the business of the Corporation may from time to time require.

SECTION 1.3. Books and Records. The books and records of the Corporation may be kept outside the State of Delaware at such place or places as may from time to time be designated by the Board.

**ARTICLE II
STOCKHOLDERS**

SECTION 2.1. Annual Meeting. If required by applicable law, an annual meeting of the stockholders of the Corporation shall be held at such date, time and place, if any, either within or without the State of Delaware, and time as may be fixed by resolution of the Board. Any other proper business may be transacted at the annual meeting. The Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board.

SECTION 2.2. Special Meeting. Except as otherwise required by law and subject to the rights of the holders of any series of preferred stock of the Corporation (the “Preferred Stock”), special meetings of stockholders of the Corporation may be called only by the Chief Executive Officer, the Chairman of the Board or the Board pursuant to a resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies; *provided, however*, that prior to the first date (the “Trigger Date”) upon which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifty percent (50%) of the outstanding shares of Class A common stock of the Corporation, par value \$0.01 per share (the “Class A Common Stock”), and Class B common stock of the Corporation, par value \$0.01

per share (the “Class B Common Stock” and, together with the Class A Common Stock, the “Common Stock”), special meetings of the stockholders of the Corporation may also be called by the Secretary of the Corporation at the request of the holders of record of 50% of the outstanding shares of Common Stock. On and after the Trigger Date, and subject to the rights of holders of any series of Preferred Stock, the stockholders of the Corporation do not have the power to call a special meeting of stockholders of the Corporation. The Board may postpone, reschedule or cancel any special meeting of the stockholders previously scheduled by the Board.

SECTION 2.3. Record Date.

(A) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by applicable law, not be more than 60 nor less than ten days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

(C) Unless otherwise restricted by the Amended and Restated Certificate of Incorporation of the Corporation, as it may be amended from time to time (the “Certificate of Incorporation”), in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (i) when no prior action of the Board is required by applicable law, the record date

for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by applicable law, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

SECTION 2.4. Stockholder List. The officer who has charge of the stock ledger shall prepare and make, at least ten days before every meeting of stockholders, a complete list of stockholders entitled to vote at any meeting of stockholders (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date), arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either on a reasonably accessible electronic network (provided that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation. The stock list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by applicable law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of the stockholders.

SECTION 2.5. Place of Meeting. The Board, the Chairman of the Board or the Chief Executive Officer, as the case may be, may designate the place of meeting for any annual meeting or for any special meeting of the stockholders. If no designation is so made, the place of meeting shall be the principal executive offices of the Corporation. The Board, acting in its sole discretion, may establish guidelines and procedures in accordance with applicable provisions of the Delaware General Corporation Law (the “DGCL”) and any other applicable law for the participation by stockholders and proxyholders in a meeting of stockholders by means of remote communications, and may determine that any meeting of stockholders will not be held at any place but will be held solely by means of remote communication. Stockholders and proxyholders complying with such procedures and guidelines and otherwise entitled to vote at a meeting of stockholders shall be deemed present in person and entitled to vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication.

SECTION 2.6. Notice of Meeting. Written or printed notice, stating the place, if any, day and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not less than ten days nor more than 60 days before the date of the meeting, in a manner pursuant to Section 7.7 hereof, to each stockholder of record entitled to vote at such meeting. The notice shall specify (i) the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the

meeting), (ii) the place, if any, date and time of such meeting, (iii) the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, (iv) in the case of a special meeting, the purpose or purposes for which such meeting is called and (v) such other information as may be required by applicable law or as may be deemed appropriate by the Board, the Chairman of the Board or the Chief Executive Officer or the Secretary of the Corporation. If the stockholder list referred to in Section 2.4 of these Bylaws is made accessible on an electronic network, the notice of meeting must indicate how the stockholder list can be accessed. If the meeting of stockholders is to be held solely by means of electronic communications, the notice of meeting must provide the information required to access such stockholder list during the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. The Corporation may provide stockholders with notice of a meeting by electronic transmission provided such stockholders have consented to receiving electronic notice in accordance with the DGCL. Such further notice shall be given as may be required by applicable law. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the notice of meeting. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present in accordance with Section 7.4 of these Bylaws.

SECTION 2.7. Quorum and Adjournment of Meetings.

(A) Except as otherwise provided by applicable law or by the Certificate of Incorporation, the holders of a majority of the outstanding shares of stock of the Corporation entitled to vote at the meeting (the “Voting Stock”), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. The chairman of the meeting or a majority of the shares so represented may adjourn the meeting from time to time, whether or not there is such a quorum. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(B) Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken; *provided, however*, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting.

SECTION 2.8. Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing (or in such other manner prescribed by the DGCL) by the stockholder or by his duly authorized attorney-in-fact. Any copy, facsimile transmission or other reliable reproduction of the writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original

writing or transmission could be used, *provided* that such copy, facsimile transmission or other reproduction shall be a complete reproduction of the entire original writing or transmission. No proxy may be voted or acted upon after the expiration of three years from the date of such proxy, unless such proxy provides for a longer period. Every proxy is revocable at the pleasure of the stockholder executing it unless the proxy states that it is irrevocable and applicable law makes it irrevocable. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary of the Corporation.

SECTION 2.9. Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders at an annual meeting of stockholders may be made only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board or any committee thereof or (c) by any stockholder of the Corporation who (i) was a stockholder of record at the time of giving of notice provided for in these Bylaws and at the time of the annual meeting, (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in these Bylaws as to such business or nomination; Section 2.9(A)(1)(c) of these Bylaws shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting) before an annual meeting of the stockholders.

(2) For any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.9(A)(1)(c) of these Bylaws, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action under the Delaware General Corporation Law (the "DGCL"). To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting (which anniversary, in the case of the first annual meeting of stockholders following the close of the Corporation's initial public offering, shall be deemed to be May 1, 2015); *provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's

notice as described above. To be in proper form, a stockholder's notice (whether given pursuant to this Section 2.9(A)(2) or Section 2.9(B)) to the Secretary of the Corporation must:

(a) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (ii) (A) the class or series and number of shares of the Corporation that are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of stock of the Corporation or otherwise (a "Derivative Instrument"), directly or indirectly owned beneficially by such stockholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Corporation, (D) any short interest in any security of the Corporation (for purposes of these Bylaws a person shall be deemed to have a "short interest" in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (G) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than ten days after the record date for the meeting to disclose such ownership as of the record date), (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (iv) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or

other business before the meeting, and (v) a representation as to whether such stockholder or any such beneficial owner intends or is part of a group that intends to (x) deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding stock required to approve or adopt the proposal or to elect each such nominee or (y) otherwise to solicit proxies from stockholders in support of such proposal or nomination. If requested by the Corporation, the information required under clauses (a)(i) and (ii) of the preceding sentence of this Section 2.9(A)(2) shall be supplemented by such stockholder and any such beneficial owner not later than ten days after the record date for notice of the meeting to disclose such information as of such record date;

(b) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(d) with respect to each nominee for election or reelection to the Board, include a completed and signed questionnaire, representation and agreement required by Section 2.9(A)(2) of these Bylaws. The Corporation may require any proposed nominee to furnish such other information as may

reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(3) Notwithstanding anything in the second sentence of Section 2.9(A)(2) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by these Bylaws shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(4) The foregoing notice requirements of this Section 2.9(A) shall be deemed satisfied by a stockholder with respect to business or a nomination if such stockholder has notified the Corporation of his intention to present a proposal or make a nomination at an annual meeting in compliance with the applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal or nomination has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(B) Special Meetings of Stockholders .

Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to a notice of meeting (a) by or at the direction of the Board or any committee thereof or (b) *provided* that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (i) is a stockholder of record at the time of giving of notice provided for in these Bylaws and at the time of the special meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in these Bylaws. In the event a special meeting of stockholders is called for the purpose of electing one or more directors to the Board, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Section 2.9(A)(2) of these Bylaws with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 2.9(A)(2) of these Bylaws) shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible to serve as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these Bylaws. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of these Bylaws, “public announcement” shall mean disclosure in a press release reported by Dow Jones News Service, the Associated Press, or any other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of these Bylaws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these Bylaws; *provided, however*, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 2.9(A)(1)(c) or Section 2.9(B) of these Bylaws. Nothing in these Bylaws shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under applicable law, the Certificate of Incorporation or these Bylaws.

(4) The Corporation may require any proposed stockholder nominee for director to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation. Unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) making a nomination or proposal under this Section 2.9 does not appear at a meeting of stockholders to present such nomination or proposal, the nomination shall be disregarded and the proposed business shall not be transacted, as the case may be, notwithstanding that proxies in favor thereof may have been received by the Corporation. For purposes of this Section 2.9, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

SECTION 2.10. Conduct of Business. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION 2.11. Required Vote. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, at any meeting at which directors are to be elected, so long as a quorum is present, the directors shall be elected by a plurality of the votes validly cast in such election. Unless otherwise provided in the Certificate of Incorporation, cumulative voting for the election of directors shall be prohibited. Except as otherwise provided by applicable law, the rules and regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation, or these Bylaws, in all matters other than the election of directors and certain non-binding advisory votes described below, the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders. In non-binding advisory matters with more than two possible vote choices, the affirmative vote of a plurality of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the recommendation of the stockholders.

SECTION 2.12. Treasury Stock. The Corporation shall not vote, directly or indirectly, shares of its own stock owned by it or any other corporation, if a majority of shares entitled to vote in the election of directors of such corporation is held, directly or indirectly by the Corporation, and such shares will not be counted for quorum purposes; *provided, however*, that the foregoing shall not limit the right of the Corporation or such other corporation, to vote stock of the Corporation held in a fiduciary capacity.

SECTION 2.13. Inspectors of Elections; Opening and Closing the Polls. At any meeting at which a vote is taken by ballots, the Board by resolution may, and when required by applicable law, shall, appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders and the appointment of an inspector is required by applicable law, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his duties, shall take and sign an oath to faithfully execute the duties of inspector with strict impartiality and according to the best of his ability. The inspectors shall have the duties prescribed by applicable law.

SECTION 2.14. Stockholder Action by Written Consent. Prior to the Trigger Date, and subject to the rights of holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken at any annual meeting or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, is or are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. On and after the Trigger Date, any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent in writing of such stockholders.

ARTICLE III BOARD OF DIRECTORS

SECTION 3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board elected in accordance with these Bylaws. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. The directors shall act only as a Board, and the individual directors shall have no power as such.

SECTION 3.2. Number, Tenure and Qualifications. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Board. The election and term of directors shall be as set forth in the Certificate of Incorporation.

SECTION 3.3. Regular Meetings. Subject to Section 3.5, regular meetings of the Board shall be held on such dates, and at such times and places, as are determined from time to time by resolution of the Board.

SECTION 3.4. Special Meetings. Special meetings of the Board shall be called at the request of the Chairman of the Board, the Chief Executive Officer or a majority of the Board then in office. The person or persons authorized to call special meetings of the Board may fix the place, if any, and time of the meetings. Any business may be conducted at a special meeting of the Board.

SECTION 3.5. Notice. Notice of any meeting of directors shall be given to each director at his business or residence in writing by hand delivery, first-class or overnight mail, courier service or facsimile or electronic transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five days before such meeting. If by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by facsimile or electronic transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 24 hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least 24 hours prior to the time set for the meeting and shall be confirmed by facsimile or electronic transmission that is sent promptly thereafter. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting, except for amendments to these Bylaws, as provided under Section 8.1. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 7.4 of these Bylaws.

SECTION 3.6. Action by Consent of Board. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, including by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board or committee. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of the State of Delaware.

SECTION 3.7. Conference Telephone Meetings. Members of the Board or any committee thereof may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting, except where such person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

SECTION 3.8. Quorum. Subject to Section 3.9, a whole number of directors equal to at least a majority of the Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board there shall be less than a quorum present, a majority of the directors present may adjourn the meeting from time to time without further notice unless (i) the date, time

and place, if any, of the adjourned meeting are not announced at the time of adjournment, in which case notice conforming to the requirements of Section 3.5 of these Bylaws shall be given to each director, or (ii) the meeting is adjourned for more than 24 hours, in which case the notice referred to in clause (i) shall be given to those directors not present at the announcement of the date, time and place of the adjourned meeting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

SECTION 3.9. Vacancies. Subject to applicable law and the rights of holders of any series of Preferred Stock, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled solely by the affirmative vote of a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall hold office for the remaining term of his predecessor. No decrease in the number of authorized directors constituting the Board shall shorten the term of any incumbent director.

SECTION 3.10. Removal. Subject to the rights of the holders of shares of any series of Preferred Stock, if any, to elect additional directors pursuant to the Certificate of Incorporation (including any certificate of designation thereunder), any director may be removed, with or without cause, upon the affirmative vote of the holders of at least $66 \frac{2}{3}$ % of the outstanding shares of stock of the Corporation entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent (if permitted) in accordance with the DGCL, the Certificate of Incorporation and these Bylaws.

SECTION 3.11. Records. The Board shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Corporation.

SECTION 3.12. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have authority to fix the compensation of directors, including fees and reimbursement of expenses. The Corporation will cause each non-employee director serving on the Board to be reimbursed for all reasonable out-of-pocket costs and expenses incurred by him in connection with such service.

SECTION 3.13. Regulations. To the extent consistent with applicable law, the Certificate of Incorporation and these Bylaws, the Board may adopt such rules and regulations for the conduct of meetings of the Board and for the management of the affairs and business of the Corporation as the Board may deem appropriate.

**ARTICLE IV
COMMITTEES**

SECTION 4.1. Designation; Powers. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Any such committee, to the extent permitted by applicable law and to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

SECTION 4.2. Procedure; Meetings; Quorum. Any committee designated pursuant to Section 4.1 shall choose its own chairman by a majority vote of the members then in attendance in the event the chairman has not been selected by the Board, shall keep regular minutes of its proceedings and report the same to the Board when requested, and shall meet at such times and at such place or places as may be provided by the charter of such committee or by resolution of such committee or resolution of the Board. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution. The Board shall adopt a charter for each committee for which a charter is required by applicable laws, regulations or stock exchange rules, may adopt a charter for any other committee, and may adopt other rules and regulations for the governance of any committee not inconsistent with the provisions of these Bylaws or any such charter, and each committee may adopt its own rules and regulations of governance, to the extent not inconsistent with these Bylaws or any charter or other rules and regulations adopted by the Board.

SECTION 4.3. Substitution of Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of the absent or disqualified member.

**ARTICLE V
OFFICERS**

SECTION 5.1. Officers. The officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, a Secretary, a Treasurer and such other officers as the Board from time to time may deem proper. The Chairman of the Board shall be chosen from among the directors. All officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article V. Such officers shall also have such powers and duties as from time to time may be conferred by the Board or by any committee thereof. The Board or any committee thereof may from time to time elect, or the Chairman of the Board or Chief Executive Officer may appoint, such other officers (including one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these Bylaws or as may be prescribed by the Board or such committee thereof or by the Chairman of the Board or Chief Executive Officer, as the case may be.

SECTION 5.2. Election and Term of Office. The officers of the Corporation shall be elected or appointed from time to time by the Board. Each officer shall hold office until his successor shall have been duly elected or appointed and shall have qualified or until his death or until he shall resign, but any officer may be removed from office at any time by the affirmative vote of a majority of the Board or, except in the case of an officer or agent elected by the Board, by the Chairman of the Board or Chief Executive Officer. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

SECTION 5.3. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board. The Chairman of the Board shall be responsible for the general management of the affairs of the Corporation and shall perform all duties incidental to his office that may be required by law and all such other duties as are properly required of him by the Board. He shall make reports to the Board and the stockholders, and shall see that all orders and resolutions of the Board and of any committee thereof are carried into effect. The Chairman of the Board may also serve as Chief Executive Officer, if so elected by the Board.

SECTION 5.4. Chief Executive Officer. The Chief Executive Officer shall act in a general executive capacity and shall assist the Chairman of the Board in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The Chief Executive Officer shall, in the absence of or because of the inability to act of the Chairman of the Board, perform all duties of the Chairman of the Board and preside at all meetings of stockholders and of the Board. The Chief Executive Officer shall have the authority to sign, in the name and on behalf of the Corporation, checks, orders, contracts, leases, notes, drafts and all other documents and instruments in connection with the business of the Corporation.

SECTION 5.5. President. The President, if any, shall have such powers and shall perform such duties as shall be assigned to him by the Board.

SECTION 5.6. Senior Vice Presidents and Vice Presidents. Each Senior Vice President and Vice President, if any, shall have such powers and shall perform such duties as shall be assigned to him by the Board.

SECTION 5.7. Treasurer. The Treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The Treasurer shall cause the funds of the Corporation to be deposited in such banks as may be authorized by the Board, or in such banks as may be designated as depositories in the manner provided by resolution of the Board. He shall have such further powers and duties and shall be subject to such directions as may be granted or imposed upon him from time to time by the Board, the Chairman of the Board or the Chief Executive Officer.

SECTION 5.8. Secretary. The Secretary shall keep or cause to be kept in one or more books provided for that purpose, the minutes of all meetings of the Board, the committees of the Board and the stockholders; he shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by applicable law; he shall be custodian of the records and the seal of the Corporation and affix and attest the seal to all stock certificates of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal; and he shall see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and in general, he shall perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board or the Chief Executive Officer.

SECTION 5.9. Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board for the unexpired portion of the term at any meeting of the Board. Any vacancy in an office appointed by the Chairman of the Board or the Chief Executive Officer because of death, resignation, or removal may be filled by the Chairman of the Board or the Chief Executive Officer.

SECTION 5.10. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board, the Chief Executive Officer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of security holders of or with respect to any action of security holders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers that the Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE VI STOCK CERTIFICATES AND TRANSFERS

SECTION 6.1. Stock Certificates and Transfers. The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated or electronic shares. The shares of the stock of the Corporation shall be entered in the books of the Corporation as they are issued and shall exhibit the holder's name and number of shares. Subject to the provisions of the Certificate of Incorporation, the shares of the stock of the Corporation shall be transferred on the books of the Corporation, which may be maintained by a third-party registrar or transfer agent, by the holder thereof in person or by his attorney, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require or upon receipt of proper transfer instructions from the registered holder of uncertificated shares and upon compliance with appropriate procedures for transferring shares in uncertificated form, at which time the Corporation shall issue a new certificate to the person entitled thereto (if the stock is then represented by certificates), cancel the old certificate and record the transaction upon its books.

Each certificated share of stock shall be signed, countersigned and registered in such manner as the Board may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

SECTION 6.2. Lost, Stolen or Destroyed Certificates. No certificate for shares or uncertificated shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board or any financial officer may in its or his discretion require.

SECTION 6.3. Ownership of Shares. The Corporation shall be entitled to treat the holder of record of any share or shares of stock of the Corporation as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

SECTION 6.4. Regulations Regarding Certificates. The Board shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of stock of the Corporation. The Corporation may enter into additional agreements with stockholders to restrict the transfer of stock of the Corporation in any manner not prohibited by the DGCL.

ARTICLE VII MISCELLANEOUS PROVISIONS

SECTION 7.1. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January and end on the thirty-first day of December of each year.

SECTION 7.2. Dividends. Except as otherwise provided by law or the Certificate of Incorporation, the Board may from time to time declare, and the Corporation may pay, dividends on its outstanding shares of stock, which dividends may be paid in either cash, property or shares of stock of the Corporation. A member of the Board, or a member of any committee designated by the Board, shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

SECTION 7.3. Seal. The seal of the Corporation, if any, shall be in such form as the Board may adopt.

SECTION 7.4. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, including by electronic transmission, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board or committee thereof need be specified in any waiver of notice of such meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 7.5. Resignations. Any director or any officer, whether elected or appointed, may resign at any time by giving written notice, including by electronic transmission, of such resignation to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the Chief Executive Officer, the President or the Secretary, or at such later time as is specified therein. No formal action shall be required of the Board or the stockholders to make any such resignation effective.

SECTION 7.6. Indemnification and Advancement of Expenses.

(A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “proceeding”) by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (a “Covered Person”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all expenses, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such proceeding.

(B) The Corporation shall, to the fullest extent not prohibited by applicable law as it presently exists or may hereafter be amended, pay the expenses (including attorneys’ fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition; provided, however, that to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Section 7.6 or otherwise.

(C) The rights to indemnification and advancement of expenses under this Section 7.6 shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 7.6, except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

(D) If a claim for indemnification under this Section 7.6 (following the final disposition of such proceeding) is not paid in full within 60 days after the Corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Section 7.6 is not paid in full within 30 days after the Corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by applicable law. In any such action, the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

(E) The rights conferred on any Covered Person by this Section 7.6 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, any provision of the Certificate of Incorporation, these Bylaws, any agreement or vote of stockholders or disinterested directors or otherwise.

(F) This Section 7.6 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

(G) Any Covered Person entitled to indemnification and/or advancement of expenses, in each case pursuant to this Section 7.6, may have certain rights to indemnification, advancement and/or insurance provided by one or more persons with whom or which such Covered Person may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with respect to any proceeding, expense, liability or matter that is the subject of this Section 7.6, (ii) the Corporation shall be primarily liable for all such obligations and any indemnification afforded to a Covered Person in respect of a proceeding, expense, liability or matter that is the subject of this Section 7.6, whether created by law, organizational or constituent documents, contract or otherwise, (iii) any obligation of any persons with whom or which a Covered Person may be associated to indemnify such Covered Person and/or advance expenses or liabilities to such Covered Person in respect of any proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify each Covered Person and advance expenses to each Covered Person hereunder to the fullest extent provided herein without regard to any rights such Covered Person may have against any other person with whom or which such Covered Person

may be associated or insurer of any such person, and (v) the Corporation irrevocably waives, relinquishes and releases any other person with whom or which a Covered Person may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder.

SECTION 7.7. Notices. Except as otherwise specifically provided herein or required by applicable law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by commercial courier service, or by facsimile or other electronic transmission, provided that notice to stockholders by electronic transmission shall be given in the manner provided in Section 232 of the DGCL. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his last known address as the same appears on the books of the Corporation. Without limiting the manner by which notice otherwise may be given effectively, notice to any stockholder shall be deemed given: (1) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (4) if by any other form of electronic transmission, when directed to the stockholder; and (5) if by mail, when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

SECTION 7.8. Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof.

SECTION 7.9. Time Periods. In applying any provision of these Bylaws that require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

SECTION 7.10. Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE VIII AMENDMENTS

SECTION 8.1. Amendments. Subject to the provisions of the Certificate of Incorporation, these Bylaws may be amended, altered or repealed (a) by resolution adopted by a

majority of the directors present at any special or regular meeting of the Board at which a quorum is present if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting or (b) at any regular or special meeting of the stockholders upon the affirmative vote of at least $66\frac{2}{3}\%$ of the shares of the Corporation entitled to vote in the election of directors if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting.

Notwithstanding the foregoing, Sections 3.9 and 3.10 and this paragraph of Section 8.1 may only be amended, altered or repealed at any regular or special meeting of the stockholders upon the affirmative vote of at least $66\frac{2}{3}\%$ of the shares of the Corporation entitled to vote thereon if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting.

Notwithstanding the foregoing, no amendment, alteration or repeal of Section 7.6 shall adversely affect any right or protection existing under these Bylaws immediately prior to such amendment, alteration or repeal, including any right or protection of a present or former director, officer or employee thereunder in respect of any act or omission occurring prior to the time of such amendment.

TRANSACTION AGREEMENT II

This Transaction Agreement II, dated as of July 30, 2014 (this “*Agreement*”), is entered into by and among Spark Energy, Inc., a Delaware corporation (“*Spark Energy*”), Spark HoldCo, LLC, a Delaware limited liability company (“*Spark HoldCo*”), NuDevco Retail, LLC, a Texas limited liability company (“*NuDevco Retail*”), NuDevco Retail Holdings, LLC, a Texas limited liability company (“*NuDevco Retail Holdings*”), Spark Energy Ventures, LLC, a Texas limited liability company (“*SEV*”), NuDevco Partners Holdings, LLC, a Texas limited liability company (“*NuDevco Partners*”) and Associated Energy Services, LP, a Texas limited partnership (“*AES*”). The above-named entities are sometimes referred to herein as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, on June 18, 2014, the Parties, SEV and Spark Energy Holdings, LLC, a Texas limited liability company (“*SEH*”), completed the transactions contemplated by that certain Transaction Agreement, dated June 18, 2014; and

WHEREAS, Spark Energy expects to enter into an underwriting agreement (the “*IPO Underwriting Agreement*”) with the several underwriters named therein (the “*Underwriters*”), providing for the initial public offering (the “*IPO*”) of shares of Class A Common Stock, par value \$0.01 per share of Spark Energy (the “*Class A Common Stock*”) and the grant of an option to the Underwriters to purchase additional shares of Class A Common Stock (the “*Additional Shares*”) within 30 days of the IPO (the “*Option*”).

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereto hereby agree as follows:

ARTICLE I

IPO TRANSACTIONS AND AGREEMENTS

Section 1.1 *Transactions*

The following transactions are to occur in the following order and be effective as of the closing date of the IPO (the “*Effective Date*”):

(a) Spark Energy will adopt and file the Amended and Restated Certificate of Incorporation, substantially in the form attached hereto as **Annex A** (the “*Amended Charter*”) and adopt the Amended and Restated Bylaws, substantially in the form attached hereto as **Annex B** (the “*Amended Bylaws*”), and the 1,000 shares of Spark Energy common stock, par value \$0.01, held by NuDevco Retail Holdings will be cancelled and the \$10.0 cash contribution returned.

(b) Upon filing of the Amended Charter and the adoption of the Amended Bylaws, Spark Energy will issue to Spark HoldCo 10,750,000 shares of newly issued Class B common stock, par value \$0.01 per share (the “*Class B Common Stock*”), and Spark HoldCo hereby accepts such contribution of the Class B Common Stock.

(c) Immediately upon completion of the transactions in Section 1.1(b) above, Spark HoldCo hereby distributes (1) to NuDevco Retail Holdings 10,612,500 shares of Class B Common Stock, constituting approximately 99% of the outstanding Class B Common Stock and (2) to NuDevco Retail 137,500 shares of Class B Common Stock, constituting approximately 1% of the outstanding Class B Common Stock, and each of NuDevco Retail Holdings and NuDevco Retail hereby accepts such distribution of the Class B Common Stock.

(d) In recognition of the transactions in Section 1.1(b) and (c), NuDevco Retail Holdings, NuDevco Retail and Spark Energy will enter into the Second Amended and Restated Limited Liability Company Agreement of Spark HoldCo, substantially in the form attached hereto as **Annex C** (the “**LLC Agreement**”) and the outstanding membership interests in Spark HoldCo held by Spark Energy, NuDevo Retail and NuDevco Retail Holdings will be converted into units of Spark HoldCo (the “**Spark HoldCo Units**”).

(e) In connection with an immediately following the execution of the LLC Agreement as provided in Section 1.1(d) above, Spark Energy will purchase 2,997,222 Spark HoldCo Units from NuDevco Retail Holdings using proceeds from the IPO and repay the previously issued \$50,000 note payable held by NuDevco Retail Holdings, for an aggregate cash purchase price of \$46,720,000. Upon completion of the steps in Section 1.1(c) and this Section 1.1(e) and subject to adjustment as provided in Article II, Spark Energy, Inc. will own 3,000,000 Spark HoldCo Units, NuDevco Retail Holdings will own 10,612,500 Spark HoldCo Units and 10,612,500 shares of Class B Stock and NuDevco Retail will own 137,500 Spark HoldCo Units and 137,500 shares of Class B Common Stock.

(f) Immediately upon completion of the transactions in Section 1.1(e) above, (1) Spark HoldCo will execute and enter into its new credit facility (the “**New Credit Facility**”) and borrow \$10.0 million under the New Credit Facility and use such borrowings to repay the portion of the Seventh Amended and Restated Credit Agreement, dated as of July 31, 2013, among Spark Energy Ventures, LLC, as parent, Spark Energy Holdings, LLC, Spark Energy, LP, Spark Energy Gas, LP and AES, as co-borrowers and the lenders and other parties thereto (the “**Existing Credit Facility**”) allocated to Spark Energy, LLC, a Texas limited liability company (“**SE**”), and Spark Energy Gas, LLC, a Texas limited liability company (“**SEG**”), pursuant to the Interborrower Agreement, dated as of May 31, 2014, by and among SE, SEG and AES (the “**Interborrower Agreement**”); (2) AES will repay the portion of the Existing Credit Facility allocated to AES pursuant to the Interborrower Agreement; and (3) \$5.5 million of short-term indebtedness incurred by Spark Energy to fund certain operating expenses and owed to AES will be permanently forgiven by AES and will be recorded as a capital contribution to Spark Energy effective as of July 25, 2014.

(g) Immediately upon completion of the transactions in Section 1.1(f) above, SEV will distribute to NuDevco Partners all of its limited liability company interest in NuDevco Retail Holdings, which constitutes 100% of the limited liability company interest in NuDevco Retail Holdings, and NuDevco Partners will accept such distribution.

Section 1.2 *Agreements* . Upon completion of the transaction in Section 1.1, NuDevco Retail Holdings, NuDevco Retail, Spark HoldCo and Spark Energy shall enter into:

- (a) a Registration Rights Agreement, substantially in the form attached here as **Annex D**; and
- (b) a Tax Receivable Agreement, substantially in the form attached hereto as **Annex E**.

ARTICLE II

OVERALLOTMENT OPTION

In the event that the Option is exercised, Spark Energy shall issue the Additional Shares to the Underwriters at a price per share equal to the per share initial public offering price of the Class A Common Stock (less underwriting discounts and commissions and structuring fees as set forth in the Underwriting Agreement), Spark Energy shall transfer all of the net proceeds it receives from the exercise of the Option to NuDevco Retail Holdings in exchange for a number of Spark HoldCo units equal to the number of shares of Class A Common Stock sold by Spark Energy to the public pursuant to the Option, and a corresponding number of shares of Class B common stock shall be cancelled.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1 *Due Organization* . Each Party represents and warrants that it is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, as applicable, and has power and authority to enter into this Agreement and to carry out its obligations hereunder.

Section 3.2 *Due Authorization* . Each Party represents and warrants that the execution and delivery of this Agreement by such Party have been duly authorized by all necessary action on its part and no other proceedings on its part are necessary to authorize this Agreement or any of the transactions contemplated hereby.

Section 3.3 *Due Execution* . Each Party represents and warrants that this Agreement has been duly executed and delivered by such Party and constitutes a valid and binding obligation of each of them, and is enforceable against each of them in accordance with its terms.

ARTICLE IV

MISCELLANEOUS

Section 4.1 *Further Assurances*. From time to time, and without any further consideration, the Parties agree to execute, acknowledge and deliver all such additional deeds, assignments, bills of sale, conveyances, instruments, notices, releases, acquittances, consents, resolutions and other documents, and to do all such other acts and things, all in accordance with

applicable law, as may be necessary or appropriate to (a) assure that the applicable Parties own all of the properties, rights, titles, interests, estates, remedies, powers and privileges granted by this Agreement, or which are intended to be so granted, (b) fully and effectively vest in the applicable Parties and their respective successors and assigns beneficial and record title to the interests contributed and assigned by this Agreement or intended to be so and (c) fully and effectively carry out the purposes and intent of this Agreement.

Section 4.2 *Successors and Assigns* . The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

Section 4.3 *No Third Party Rights* . The provisions of this Agreement are intended to bind the Parties to each other and are not intended to and do not create rights in any other person or confer upon any other person any benefits, rights or remedies and no person is or is intended to be a third party beneficiary of any of the provisions of this Agreement.

Section 4.4 *Severability* . If any of the provisions of this Agreement are held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any political body having jurisdiction over the subject matter hereof, such contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, and an equitable adjustment shall be made and any necessary provision added so as to give effect to the intention of the Parties as expressed in this Agreement at the time of execution of this Agreement.

Section 4.5 *Entire Agreement* . This Agreement and the instruments referenced herein supersede all previous understandings or agreements among the Parties, whether oral or written, with respect to the subject matter of this Agreement and such instruments. This Agreement and such instruments contain the entire understanding of the Parties with respect to the subject matter hereof and thereof. No understanding, representation, promise or agreement, whether oral or written, is intended to be or shall be included in or form part of this Agreement unless it is contained in a written amendment hereto executed by the Parties after the date of this Agreement.

Section 4.6 *Amendment or Modification* . This Agreement may be amended or modified at any time or from time to time only by a written instrument, specifically stating that such written instrument is intended to amend or modify this Agreement, signed by each of the Parties.

Section 4.7 *Applicable Law* . This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 4.8 *Headings* . All Article and Section headings in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any of the provisions hereof. All references herein to Articles and Sections shall, unless the context requires a different construction, be deemed to be references to the Articles and Sections of this Agreement. The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole, and not to any particular

provision of this Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa. The use herein of the word “including” following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation”, “but not limited to”, or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

Section 4.9 *Counterparts* . This Agreement may be executed in any number of counterparts with the same effect as if all Parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same instrument. The delivery of an executed counterpart copy of this Agreement by facsimile or electronic transmission in PDF format shall be deemed to be the equivalent of delivery of the originally executed copy thereof.

Section 4.10 *Deed; Bill of Sale; Assignment* . To the extent required and permitted by applicable law, this Agreement shall also constitute a “deed,” “bill of sale” or “assignment” of the assets and interests referenced herein.

Section 4.11 *Termination* . This Agreement shall terminate and be of no further force and effect if the IPO has not been consummated by August 8, 2014.

[*Signature Page Follows*]

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties as of the date first written above.

NUDEVCO RETAIL HOLDINGS, LLC

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President and General Counsel

ADDRESS FOR NOTICES:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042

NUDEVCO RETAIL, LLC

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President and General Counsel

ADDRESS FOR NOTICES:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042

SPARK HOLDCO, LLC

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President and General Counsel

ADDRESS FOR NOTICES:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042

SIGNATURE PAGE
TRANSACTION AGREEMENT

SPARK ENERGY, INC.

By: /s/ Gil Melman

Name: Gil Melman

Title: Vice President and General Counsel

ADDRESS FOR NOTICES:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042

ASSOCIATED ENERGY SERVICES, LP

By: Spark Energy Holdings, LLC
its general partner

By: /s/ Todd Gibson

Name: Todd Gibson

Title: Chief Financial Officer

ADDRESS FOR NOTICES:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042

SPARK ENERGY VENTURES, LLC

By: /s/ Terry D. Jones

Name: Terry D. Jones

Title: Executive Vice President and General
Counsel

ADDRESS FOR NOTICES:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042

SIGNATURE PAGE
TRANSACTION AGREEMENT

NUDEVCO PARTNERS HOLDINGS, LLC

By: /s/ Terry D. Jones

Name: Terry D. Jones

Title: Executive Vice President and General
Counsel

ADDRESS FOR NOTICES:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042

SIGNATURE PAGE
TRANSACTION AGREEMENT

ANNEX A

AMENDED CHARTER

(see attached)

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SPARK ENERGY, INC.

Spark Energy, Inc. (the “Corporation”), a corporation organized and existing under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the “DGCL”), hereby certifies as follows:

1. The original Certificate of Incorporation of the Corporation (the “Original Certificate of Incorporation”) was filed with the Secretary of State of the State of Delaware on April 22, 2014.

2. This Amended and Restated Certificate of Incorporation (this “Amended and Restated Certificate of Incorporation”), which restates and amends the Original Certificate of Incorporation, has been declared advisable by the board of directors of the Corporation (the “Board”), duly adopted by the stockholders of the Corporation and duly executed and acknowledged by the officers of the Corporation in accordance with Sections 103, 228, 242 and 245 of the DGCL.

3. The Original Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is Spark Energy, Inc.

SECOND: The address of its registered office in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 in New Castle County, Delaware. The name of its registered agent at such address is Corporation Service Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL as it currently exists or may hereafter be amended.

FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is 200,000,000 shares of stock, classified as (i) 20,000,000 shares of preferred stock, par value \$0.01 per share (“Preferred Stock”), (ii) 120,000,000 shares of Class A common stock, par value \$0.01 per share (“Class A Common Stock”), and (iii) 60,000,000 shares of Class B common stock, par value \$0.01 per share (“Class B Common Stock”) and, together with the Class A Common Stock, the “Common Stock”).

1. Provisions Relating to Preferred Stock.

(a) Preferred Stock may be issued from time to time in one or more classes or series, the shares of each series to have such designations and powers, preferences and rights, and qualifications, limitations and restrictions thereof, as are stated and expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board as hereafter prescribed (a “Preferred Stock Designation”).

(b) Authority is hereby expressly granted to and vested in the Board to authorize the issuance of Preferred Stock from time to time in one or more classes or series, and with respect to each series of Preferred Stock, to fix and state by the resolution or resolutions from time to time adopted by the Board providing for the issuance thereof the designation and the powers, preferences, rights, qualifications, limitations and restrictions relating to each series of Preferred Stock, including, but not limited to, the following:

(i) whether or not the series is to have voting rights, full, special or limited, or is to be without voting rights, and whether or not such series is to be entitled to vote as a separate class either alone or together with the holders of one or more other classes or series of stock;

(ii) the number of shares to constitute the series and the designations thereof;

(iii) the preferences, and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to any series;

(iv) whether or not the shares of any series shall be redeemable at the option of the Corporation or the holders thereof or upon the happening of any specified event, and, if redeemable, the redemption price or prices (which may be payable in the form of cash, notes, securities or other property), and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;

(v) whether or not the shares of a series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and, if such retirement or sinking fund or funds are to be established, the annual amount thereof, and the terms and provisions relative to the operation thereof;

(vi) the dividend rate, whether dividends are payable in cash, stock of the Corporation or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of dividends payable on any other class or classes or series of stock, whether or not such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;

(vii) the preferences, if any, and the amounts thereof which the holders of any series thereof shall be entitled to receive upon the voluntary or involuntary liquidation, dissolution or winding up of, or upon any distribution of the assets of, the Corporation;

(viii) whether or not the shares of any series, at the option of the Corporation or the holder thereof or upon the happening of any specified event, shall be convertible into or exchangeable for, the shares of any other class or classes or of any other series of the same or any other class or classes of stock, securities or other property of the Corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and

(ix) such other powers, preferences, rights, qualifications, limitations and restrictions with respect to any series as may to the Board seem advisable.

(c) The shares of each series of Preferred Stock may vary from the shares of any other series thereof in any or all of the foregoing respects.

2. Provisions Relating to Common Stock.

(a) Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, each share of Common Stock shall have identical rights and privileges in every respect. Common Stock shall be subject to the express terms of Preferred Stock and any series thereof. Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, in a Preferred Stock Designation or by applicable law, the holders of shares of Common Stock shall be entitled to one vote for each such share upon all questions presented to the stockholders, the holders of shares of Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, and the holders of Preferred Stock shall not be entitled to vote at or receive notice of any meeting of stockholders. Each holder of Common Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law on all matters put to a vote of the stockholders of the Corporation. Except as otherwise required in this Amended and Restated Certificate of Incorporation or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, the holders of Common Stock and the Preferred Stock shall vote together as a single class).

(b) Notwithstanding the foregoing, except as otherwise required by applicable law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

(c) Subject to the prior rights and preferences, if any, applicable to shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive ratably in proportion to the number of shares of Class A Common Stock held by them such dividends and distributions (payable in cash, stock or otherwise), if any, as may be declared thereon by the Board at any time and from time to time out of any funds of the

Corporation legally available therefor. Dividends and other distributions shall not be declared or paid on the Class B Common Stock unless (i) the dividend consists of shares of Class B Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable for shares of Class B Common Stock paid proportionally with respect to each outstanding share of Class B Common Stock and (ii) a dividend consisting of shares of Class A Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable for shares of Class A Common Stock on equivalent terms is simultaneously paid to the holders of Class A Common Stock. If dividends are declared on the Class A Common Stock or the Class B Common Stock that are payable in shares of Common Stock, or securities convertible into, or exercisable or exchangeable for Common Stock, the dividends payable to the holders of Class A Common Stock shall be paid only in shares of Class A Common Stock (or securities convertible into, or exercisable or exchangeable for Class A Common Stock), the dividends payable to the holders of Class B Common Stock shall be paid only in shares of Class B Common Stock (or securities convertible into, or exercisable or exchangeable for Class B Common Stock), and such dividends shall be paid in the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively (or securities convertible into, or exercisable or exchangeable for the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively). In no event shall the shares of either Class A Common Stock or Class B Common Stock be split, divided, or combined unless the outstanding shares of the other class shall be proportionately split, divided or combined.

(d) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Class A Common Stock held by them. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. A dissolution, liquidation or winding-up of the Corporation, as such terms are used in this paragraph (d), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange or conveyance of all or a part of the assets of the Corporation

(e) Shares of Class B Common Stock shall be exchangeable for shares of Class A Common Stock on the terms and subject to the conditions set forth in the Second Amended and Restated Limited Liability Agreement of Spark HoldCo, LLC dated as of August 1, 2014, (the “LLC Agreement”). The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of issuance upon exchange of the outstanding shares of Class B Common Stock for Class A Common Stock pursuant to the LLC Agreement, such number of shares of Class A Common Stock that shall be issuable upon any such exchange pursuant to the LLC Agreement; provided that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such exchange of shares of Class B Common Stock pursuant to the LLC Agreement by delivering to the holder of shares of Class B Common Stock upon such exchange, cash in lieu of shares of Class A Common Stock in the amount permitted by and

provided in the LLC Agreement or shares of Class A Common Stock which are held in the treasury of the Corporation. All shares of Class A Common Stock that shall be issued upon any such exchange will, upon issuance in accordance with the LLC Agreement, be validly issued, fully paid and non-assessable. All shares of Class B Common Stock exchanged shall be cancelled.

(f) The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of either Common Stock or Preferred Stock voting separately as a class shall be required therefor.

(g) No stockholder shall, by reason of the holding of shares of any class or series of capital stock of the Corporation, have any preemptive or preferential right to acquire or subscribe for any shares or securities of any class, whether now or hereafter authorized, which may at any time be issued, sold or offered for sale by the Corporation, unless specifically provided for in the terms of a series of Preferred Stock.

FIFTH: The business and affairs of the Corporation shall be managed by or under the direction of the Board. The directors, other than those who may be elected by the holders of any series of Preferred Stock specified in the related Preferred Stock Designation, shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as is reasonably possible, with the initial term of office of the first class to expire at the 2015 annual meeting (the "Class I Directors"), the initial term of office of the second class to expire at the 2016 annual meeting (the "Class II Directors"), and the initial term of office of the third class to expire at the 2017 annual meeting (the "Class III Directors"), with each director to hold office until his successor shall have been duly elected and qualified. At each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his successor shall have been duly elected and qualified. The Board is authorized to assign members of the Board already in office to Class I, Class II or Class III at the time such classification becomes effective. Subject to applicable law and the rights of the holders of any series of Preferred Stock, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled solely by the affirmative vote of a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall hold office for the remaining term of his predecessor. No decrease in the number of authorized directors constituting the Board shall shorten the term of any incumbent director.

Subject to the rights of the holders of shares of any series of Preferred Stock, if any, to elect additional directors pursuant to this Amended and Restated Certificate of Incorporation (including any Preferred Stock Designation thereunder), any director may be removed, with or without cause, upon the affirmative vote of the holders of at least 66 ²/₃ % of the outstanding

shares of stock of the Corporation entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent (if permitted) in accordance with the DGCL, this Amended and Restated Certificate of Incorporation and the bylaws of the Corporation.

Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, if any, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Board. Unless and except to the extent that the bylaws of the Corporation so provide, the election of directors need not be by written ballot. There shall be no cumulative voting in the election of directors.

SIXTH: Prior to the first date (the “Trigger Date”) upon which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifty percent (50%) of the outstanding Common Stock of the Corporation, and subject to the rights of holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken at any annual meeting or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, is or are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. On and after the Trigger Date, any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent in writing of such stockholders.

SEVENTH: Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of stockholders of the Corporation may be called only by the Chief Executive Officer, the Chairman of the Board or the Board pursuant to a resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies; *provided, however*, that prior to the Trigger Date, special meetings of the stockholders of the Corporation may also be called by the Secretary of the Corporation at the request of the holders of record of more than 50% of the outstanding shares of Common Stock. On and after the Trigger Date, and subject to the rights of holders of any series of Preferred Stock, the stockholders of the Corporation do not have the power to call a special meeting of stockholders of the Corporation.

EIGHTH: In furtherance of, and not in limitation of, the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend or repeal the bylaws of the Corporation without any action on the part of the stockholders of the Corporation; *provided* that any bylaw adopted or amended by the Board, and any powers thereby conferred, may be amended, altered or repealed by the stockholders of the Corporation by the vote of holders of not less than 66 ²/₃ % in voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class. No bylaws hereafter made or adopted, nor any repeal of or amendment thereto, shall invalidate any prior act of the Board that was valid at the time it was taken.

NINTH: No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as it now

exists. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the preceding sentence, a director of the Corporation shall not be liable to the fullest extent permitted by any amendment to the DGCL hereafter enacted that further limits the liability of a director.

Any amendment, repeal or modification of this Article Ninth shall be prospective only and shall not affect any limitation on liability of a director for acts or omissions occurring prior to the date of such amendment, repeal or modification.

TENTH: To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, any business opportunities that are from time to time presented to NuDevco Partners, LLC, NuDevco Partners Holdings, LLC and W. Keith Maxwell III (collectively, the “Sponsors”) or any of their respective affiliates or any of their respective agents, shareholders, members, partners, directors, officers, employees, affiliates or subsidiaries (other than the Corporation and its subsidiaries), including any director or officer of the Corporation who is also an agent, shareholder, member, partner, director, officer, employee, affiliate or subsidiary of any Sponsor (each, a “Business Opportunities Exempt Party”), even if the business opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and no Business Opportunities Exempt Party shall have any duty to communicate or offer any such business opportunity to the Corporation or be liable to the Corporation or any of its subsidiaries or any stockholder, including for breach of any fiduciary or other duty, as a director or officer or controlling stockholder or otherwise, and the Corporation shall indemnify each Business Opportunities Exempt Party against any claim that such person is liable to the Corporation or its stockholders for breach of any fiduciary duty, by reason of the fact that such person (i) participates in, pursues or acquires any such business opportunity, (ii) directs any such business opportunity to another person or (iii) fails to present any such business opportunity, or information regarding any such business opportunity, to the Corporation or its subsidiaries, unless, in the case of a person who is a director or officer of the Corporation, such business opportunity is expressly offered to such director or officer in writing solely in his capacity as a director or officer of the Corporation.

Neither the amendment nor repeal of this Article Tenth, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation, nor, to the fullest extent permitted by Delaware law, any modification of law, shall eliminate, reduce or otherwise adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

If any provision or provisions of this Article Tenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Tenth (including, without limitation, each portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable that is not itself

held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Tenth (including, without limitation, each such portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by applicable law.

This Article Tenth shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation or applicable law. Any person or entity purchasing or otherwise acquiring any interest in any securities of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article Tenth.

ELEVENTH: Prior to the first date (the “Section 203 Trigger Date”) upon which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifteen percent (15%) of the outstanding Common Stock of the Corporation, the provisions of Section 203 of the DGCL shall not be applicable to the Corporation. On and after the Section 203 Trigger Date, the provisions of Section 203 of the DGCL shall be applicable to the Corporation.

TWELFTH: The Corporation shall have the right, subject to any express provisions or restrictions contained in this Amended and Restated Certificate of Incorporation or bylaws of the Corporation, from time to time, to amend this Amended and Restated Certificate of Incorporation or any provision hereof in any manner now or hereafter provided by applicable law, and all rights and powers of any kind conferred upon a director or stockholder of the Corporation by this Amended and Restated Certificate of Incorporation or any amendment hereof are subject to such right of the Corporation.

THIRTEENTH: Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation (and in addition to any other vote that may be required by applicable law, this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation), the affirmative vote of the holders of at least 66 ²/₃ % in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation.

FOURTEENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Corporation’s bylaws, or (iv) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation governed by the internal affairs doctrine, in each

such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article Fourteenth.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation as of this 1st day of August, 2014.

SPARK ENERGY, INC.

By: _____
Name:
Title:

[*Signature Page to Amended and Restated Certificate of Incorporation*]

ANNEX B

AMENDED BYLAWS

(see attached)

AMENDED AND RESTATED BYLAWS

OF

SPARK ENERGY, INC.

Incorporated under the Laws of the State of Delaware

Date of Adoption: [•], 2014

**ARTICLE I
OFFICES AND RECORDS**

SECTION 1.1. Registered Office. The registered office of Spark Energy, Inc. (the “Corporation”) in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, and the name of the Corporation’s registered agent at such address is Corporation Service Company. The registered office and registered agent of the Corporation may be changed from time to time by the board of directors of the Corporation (the “Board”) in the manner provided by applicable law.

SECTION 1.2. Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the Board may designate or as the business of the Corporation may from time to time require.

SECTION 1.3. Books and Records. The books and records of the Corporation may be kept outside the State of Delaware at such place or places as may from time to time be designated by the Board.

**ARTICLE II
STOCKHOLDERS**

SECTION 2.1. Annual Meeting. If required by applicable law, an annual meeting of the stockholders of the Corporation shall be held at such date, time and place, if any, either within or without the State of Delaware, and time as may be fixed by resolution of the Board. Any other proper business may be transacted at the annual meeting. The Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board.

SECTION 2.2. Special Meeting. Except as otherwise required by law and subject to the rights of the holders of any series of preferred stock of the Corporation (the “Preferred Stock”), special meetings of stockholders of the Corporation may be called only by the Chief Executive Officer, the Chairman of the Board or the Board pursuant to a resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies; *provided, however*, that prior to the first date (the “Trigger Date”) upon which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifty percent (50%) of the outstanding shares of Class A common stock of the Corporation, par value \$0.01 per share (the “Class A Common Stock”), and Class B common stock of the Corporation, par value \$0.01

per share (the “Class B Common Stock” and, together with the Class A Common Stock, the “Common Stock”), special meetings of the stockholders of the Corporation may also be called by the Secretary of the Corporation at the request of the holders of record of 50% of the outstanding shares of Common Stock. On and after the Trigger Date, and subject to the rights of holders of any series of Preferred Stock, the stockholders of the Corporation do not have the power to call a special meeting of stockholders of the Corporation. The Board may postpone, reschedule or cancel any special meeting of the stockholders previously scheduled by the Board.

SECTION 2.3. Record Date.

(A) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by applicable law, not be more than 60 nor less than ten days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

(C) Unless otherwise restricted by the Amended and Restated Certificate of Incorporation of the Corporation, as it may be amended from time to time (the “Certificate of Incorporation”), in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (i) when no prior action of the Board is required by applicable law, the record date

for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by applicable law, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

SECTION 2.4. Stockholder List. The officer who has charge of the stock ledger shall prepare and make, at least ten days before every meeting of stockholders, a complete list of stockholders entitled to vote at any meeting of stockholders (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date), arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either on a reasonably accessible electronic network (provided that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation. The stock list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by applicable law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of the stockholders.

SECTION 2.5. Place of Meeting. The Board, the Chairman of the Board or the Chief Executive Officer, as the case may be, may designate the place of meeting for any annual meeting or for any special meeting of the stockholders. If no designation is so made, the place of meeting shall be the principal executive offices of the Corporation. The Board, acting in its sole discretion, may establish guidelines and procedures in accordance with applicable provisions of the Delaware General Corporation Law (the “DGCL”) and any other applicable law for the participation by stockholders and proxyholders in a meeting of stockholders by means of remote communications, and may determine that any meeting of stockholders will not be held at any place but will be held solely by means of remote communication. Stockholders and proxyholders complying with such procedures and guidelines and otherwise entitled to vote at a meeting of stockholders shall be deemed present in person and entitled to vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication.

SECTION 2.6. Notice of Meeting. Written or printed notice, stating the place, if any, day and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not less than ten days nor more than 60 days before the date of the meeting, in a manner pursuant to Section 7.7 hereof, to each stockholder of record entitled to vote at such meeting. The notice shall specify (i) the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the

meeting), (ii) the place, if any, date and time of such meeting, (iii) the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, (iv) in the case of a special meeting, the purpose or purposes for which such meeting is called and (v) such other information as may be required by applicable law or as may be deemed appropriate by the Board, the Chairman of the Board or the Chief Executive Officer or the Secretary of the Corporation. If the stockholder list referred to in Section 2.4 of these Bylaws is made accessible on an electronic network, the notice of meeting must indicate how the stockholder list can be accessed. If the meeting of stockholders is to be held solely by means of electronic communications, the notice of meeting must provide the information required to access such stockholder list during the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. The Corporation may provide stockholders with notice of a meeting by electronic transmission provided such stockholders have consented to receiving electronic notice in accordance with the DGCL. Such further notice shall be given as may be required by applicable law. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the notice of meeting. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present in accordance with Section 7.4 of these Bylaws.

SECTION 2.7. Quorum and Adjournment of Meetings.

(A) Except as otherwise provided by applicable law or by the Certificate of Incorporation, the holders of a majority of the outstanding shares of stock of the Corporation entitled to vote at the meeting (the “Voting Stock”), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. The chairman of the meeting or a majority of the shares so represented may adjourn the meeting from time to time, whether or not there is such a quorum. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(B) Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken; *provided, however*, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting.

SECTION 2.8. Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing (or in such other manner prescribed by the DGCL) by the stockholder or by his duly authorized attorney-in-fact. Any copy, facsimile transmission or other reliable reproduction of the writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original

writing or transmission could be used, *provided* that such copy, facsimile transmission or other reproduction shall be a complete reproduction of the entire original writing or transmission. No proxy may be voted or acted upon after the expiration of three years from the date of such proxy, unless such proxy provides for a longer period. Every proxy is revocable at the pleasure of the stockholder executing it unless the proxy states that it is irrevocable and applicable law makes it irrevocable. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary of the Corporation.

SECTION 2.9. Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders at an annual meeting of stockholders may be made only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board or any committee thereof or (c) by any stockholder of the Corporation who (i) was a stockholder of record at the time of giving of notice provided for in these Bylaws and at the time of the annual meeting, (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in these Bylaws as to such business or nomination; Section 2.9(A)(1)(c) of these Bylaws shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting) before an annual meeting of the stockholders.

(2) For any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.9(A)(1)(c) of these Bylaws, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action under the Delaware General Corporation Law (the "DGCL"). To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting (which anniversary, in the case of the first annual meeting of stockholders following the close of the Corporation's initial public offering, shall be deemed to be May 1, 2015); *provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's

notice as described above. To be in proper form, a stockholder's notice (whether given pursuant to this Section 2.9(A)(2) or Section 2.9(B)) to the Secretary of the Corporation must:

(a) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (ii) (A) the class or series and number of shares of the Corporation that are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of stock of the Corporation or otherwise (a "Derivative Instrument"), directly or indirectly owned beneficially by such stockholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Corporation, (D) any short interest in any security of the Corporation (for purposes of these Bylaws a person shall be deemed to have a "short interest" in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (G) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than ten days after the record date for the meeting to disclose such ownership as of the record date), (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (iv) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or

other business before the meeting, and (v) a representation as to whether such stockholder or any such beneficial owner intends or is part of a group that intends to (x) deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding stock required to approve or adopt the proposal or to elect each such nominee or (y) otherwise to solicit proxies from stockholders in support of such proposal or nomination. If requested by the Corporation, the information required under clauses (a)(i) and (ii) of the preceding sentence of this Section 2.9(A)(2) shall be supplemented by such stockholder and any such beneficial owner not later than ten days after the record date for notice of the meeting to disclose such information as of such record date;

(b) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(d) with respect to each nominee for election or reelection to the Board, include a completed and signed questionnaire, representation and agreement required by Section 2.9(A)(2) of these Bylaws. The Corporation may require any proposed nominee to furnish such other information as may

reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(3) Notwithstanding anything in the second sentence of Section 2.9(A)(2) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by these Bylaws shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(4) The foregoing notice requirements of this Section 2.9(A) shall be deemed satisfied by a stockholder with respect to business or a nomination if such stockholder has notified the Corporation of his intention to present a proposal or make a nomination at an annual meeting in compliance with the applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal or nomination has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(B) Special Meetings of Stockholders .

Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to a notice of meeting (a) by or at the direction of the Board or any committee thereof or (b) *provided* that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (i) is a stockholder of record at the time of giving of notice provided for in these Bylaws and at the time of the special meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in these Bylaws. In the event a special meeting of stockholders is called for the purpose of electing one or more directors to the Board, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Section 2.9(A)(2) of these Bylaws with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 2.9(A)(2) of these Bylaws) shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible to serve as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these Bylaws. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of these Bylaws, “public announcement” shall mean disclosure in a press release reported by Dow Jones News Service, the Associated Press, or any other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of these Bylaws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these Bylaws; *provided, however*, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 2.9(A)(1)(c) or Section 2.9(B) of these Bylaws. Nothing in these Bylaws shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under applicable law, the Certificate of Incorporation or these Bylaws.

(4) The Corporation may require any proposed stockholder nominee for director to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation. Unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) making a nomination or proposal under this Section 2.9 does not appear at a meeting of stockholders to present such nomination or proposal, the nomination shall be disregarded and the proposed business shall not be transacted, as the case may be, notwithstanding that proxies in favor thereof may have been received by the Corporation. For purposes of this Section 2.9, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

SECTION 2.10. Conduct of Business. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION 2.11. Required Vote. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, at any meeting at which directors are to be elected, so long as a quorum is present, the directors shall be elected by a plurality of the votes validly cast in such election. Unless otherwise provided in the Certificate of Incorporation, cumulative voting for the election of directors shall be prohibited. Except as otherwise provided by applicable law, the rules and regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation, or these Bylaws, in all matters other than the election of directors and certain non-binding advisory votes described below, the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders. In non-binding advisory matters with more than two possible vote choices, the affirmative vote of a plurality of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the recommendation of the stockholders.

SECTION 2.12. Treasury Stock. The Corporation shall not vote, directly or indirectly, shares of its own stock owned by it or any other corporation, if a majority of shares entitled to vote in the election of directors of such corporation is held, directly or indirectly by the Corporation, and such shares will not be counted for quorum purposes; *provided, however*, that the foregoing shall not limit the right of the Corporation or such other corporation, to vote stock of the Corporation held in a fiduciary capacity.

SECTION 2.13. Inspectors of Elections; Opening and Closing the Polls. At any meeting at which a vote is taken by ballots, the Board by resolution may, and when required by applicable law, shall, appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders and the appointment of an inspector is required by applicable law, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his duties, shall take and sign an oath to faithfully execute the duties of inspector with strict impartiality and according to the best of his ability. The inspectors shall have the duties prescribed by applicable law.

SECTION 2.14. Stockholder Action by Written Consent. Prior to the Trigger Date, and subject to the rights of holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken at any annual meeting or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, is or are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. On and after the Trigger Date, any action required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent in writing of such stockholders.

ARTICLE III BOARD OF DIRECTORS

SECTION 3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board elected in accordance with these Bylaws. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. The directors shall act only as a Board, and the individual directors shall have no power as such.

SECTION 3.2. Number, Tenure and Qualifications. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Board. The election and term of directors shall be as set forth in the Certificate of Incorporation.

SECTION 3.3. Regular Meetings. Subject to Section 3.5, regular meetings of the Board shall be held on such dates, and at such times and places, as are determined from time to time by resolution of the Board.

SECTION 3.4. Special Meetings. Special meetings of the Board shall be called at the request of the Chairman of the Board, the Chief Executive Officer or a majority of the Board then in office. The person or persons authorized to call special meetings of the Board may fix the place, if any, and time of the meetings. Any business may be conducted at a special meeting of the Board.

SECTION 3.5. Notice. Notice of any meeting of directors shall be given to each director at his business or residence in writing by hand delivery, first-class or overnight mail, courier service or facsimile or electronic transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five days before such meeting. If by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by facsimile or electronic transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 24 hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least 24 hours prior to the time set for the meeting and shall be confirmed by facsimile or electronic transmission that is sent promptly thereafter. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting, except for amendments to these Bylaws, as provided under Section 8.1. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 7.4 of these Bylaws.

SECTION 3.6. Action by Consent of Board. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, including by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board or committee. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of the State of Delaware.

SECTION 3.7. Conference Telephone Meetings. Members of the Board or any committee thereof may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting, except where such person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

SECTION 3.8. Quorum. Subject to Section 3.9, a whole number of directors equal to at least a majority of the Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board there shall be less than a quorum present, a majority of the directors present may adjourn the meeting from time to time without further notice unless (i) the date, time

and place, if any, of the adjourned meeting are not announced at the time of adjournment, in which case notice conforming to the requirements of Section 3.5 of these Bylaws shall be given to each director, or (ii) the meeting is adjourned for more than 24 hours, in which case the notice referred to in clause (i) shall be given to those directors not present at the announcement of the date, time and place of the adjourned meeting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

SECTION 3.9. Vacancies. Subject to applicable law and the rights of holders of any series of Preferred Stock, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled solely by the affirmative vote of a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall hold office for the remaining term of his predecessor. No decrease in the number of authorized directors constituting the Board shall shorten the term of any incumbent director.

SECTION 3.10. Removal. Subject to the rights of the holders of shares of any series of Preferred Stock, if any, to elect additional directors pursuant to the Certificate of Incorporation (including any certificate of designation thereunder), any director may be removed, with or without cause, upon the affirmative vote of the holders of at least $66 \frac{2}{3}$ % of the outstanding shares of stock of the Corporation entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent (if permitted) in accordance with the DGCL, the Certificate of Incorporation and these Bylaws.

SECTION 3.11. Records. The Board shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Corporation.

SECTION 3.12. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have authority to fix the compensation of directors, including fees and reimbursement of expenses. The Corporation will cause each non-employee director serving on the Board to be reimbursed for all reasonable out-of-pocket costs and expenses incurred by him in connection with such service.

SECTION 3.13. Regulations. To the extent consistent with applicable law, the Certificate of Incorporation and these Bylaws, the Board may adopt such rules and regulations for the conduct of meetings of the Board and for the management of the affairs and business of the Corporation as the Board may deem appropriate.

**ARTICLE IV
COMMITTEES**

SECTION 4.1. Designation; Powers. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Any such committee, to the extent permitted by applicable law and to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

SECTION 4.2. Procedure; Meetings; Quorum. Any committee designated pursuant to Section 4.1 shall choose its own chairman by a majority vote of the members then in attendance in the event the chairman has not been selected by the Board, shall keep regular minutes of its proceedings and report the same to the Board when requested, and shall meet at such times and at such place or places as may be provided by the charter of such committee or by resolution of such committee or resolution of the Board. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution. The Board shall adopt a charter for each committee for which a charter is required by applicable laws, regulations or stock exchange rules, may adopt a charter for any other committee, and may adopt other rules and regulations for the governance of any committee not inconsistent with the provisions of these Bylaws or any such charter, and each committee may adopt its own rules and regulations of governance, to the extent not inconsistent with these Bylaws or any charter or other rules and regulations adopted by the Board.

SECTION 4.3. Substitution of Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of the absent or disqualified member.

**ARTICLE V
OFFICERS**

SECTION 5.1. Officers. The officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, a Secretary, a Treasurer and such other officers as the Board from time to time may deem proper. The Chairman of the Board shall be chosen from among the directors. All officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article V. Such officers shall also have such powers and duties as from time to time may be conferred by the Board or by any committee thereof. The Board or any committee thereof may from time to time elect, or the Chairman of the Board or Chief Executive Officer may appoint, such other officers (including one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these Bylaws or as may be prescribed by the Board or such committee thereof or by the Chairman of the Board or Chief Executive Officer, as the case may be.

SECTION 5.2. Election and Term of Office. The officers of the Corporation shall be elected or appointed from time to time by the Board. Each officer shall hold office until his successor shall have been duly elected or appointed and shall have qualified or until his death or until he shall resign, but any officer may be removed from office at any time by the affirmative vote of a majority of the Board or, except in the case of an officer or agent elected by the Board, by the Chairman of the Board or Chief Executive Officer. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

SECTION 5.3. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board. The Chairman of the Board shall be responsible for the general management of the affairs of the Corporation and shall perform all duties incidental to his office that may be required by law and all such other duties as are properly required of him by the Board. He shall make reports to the Board and the stockholders, and shall see that all orders and resolutions of the Board and of any committee thereof are carried into effect. The Chairman of the Board may also serve as Chief Executive Officer, if so elected by the Board.

SECTION 5.4. Chief Executive Officer. The Chief Executive Officer shall act in a general executive capacity and shall assist the Chairman of the Board in the administration and operation of the Corporation's business and general supervision of its policies and affairs. The Chief Executive Officer shall, in the absence of or because of the inability to act of the Chairman of the Board, perform all duties of the Chairman of the Board and preside at all meetings of stockholders and of the Board. The Chief Executive Officer shall have the authority to sign, in the name and on behalf of the Corporation, checks, orders, contracts, leases, notes, drafts and all other documents and instruments in connection with the business of the Corporation.

SECTION 5.5. President. The President, if any, shall have such powers and shall perform such duties as shall be assigned to him by the Board.

SECTION 5.6. Senior Vice Presidents and Vice Presidents. Each Senior Vice President and Vice President, if any, shall have such powers and shall perform such duties as shall be assigned to him by the Board.

SECTION 5.7. Treasurer. The Treasurer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The Treasurer shall cause the funds of the Corporation to be deposited in such banks as may be authorized by the Board, or in such banks as may be designated as depositories in the manner provided by resolution of the Board. He shall have such further powers and duties and shall be subject to such directions as may be granted or imposed upon him from time to time by the Board, the Chairman of the Board or the Chief Executive Officer.

SECTION 5.8. Secretary. The Secretary shall keep or cause to be kept in one or more books provided for that purpose, the minutes of all meetings of the Board, the committees of the Board and the stockholders; he shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by applicable law; he shall be custodian of the records and the seal of the Corporation and affix and attest the seal to all stock certificates of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal; and he shall see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and in general, he shall perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board or the Chief Executive Officer.

SECTION 5.9. Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation, or removal may be filled by the Board for the unexpired portion of the term at any meeting of the Board. Any vacancy in an office appointed by the Chairman of the Board or the Chief Executive Officer because of death, resignation, or removal may be filled by the Chairman of the Board or the Chief Executive Officer.

SECTION 5.10. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board, the Chief Executive Officer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of security holders of or with respect to any action of security holders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers that the Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE VI STOCK CERTIFICATES AND TRANSFERS

SECTION 6.1. Stock Certificates and Transfers. The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated or electronic shares. The shares of the stock of the Corporation shall be entered in the books of the Corporation as they are issued and shall exhibit the holder's name and number of shares. Subject to the provisions of the Certificate of Incorporation, the shares of the stock of the Corporation shall be transferred on the books of the Corporation, which may be maintained by a third-party registrar or transfer agent, by the holder thereof in person or by his attorney, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require or upon receipt of proper transfer instructions from the registered holder of uncertificated shares and upon compliance with appropriate procedures for transferring shares in uncertificated form, at which time the Corporation shall issue a new certificate to the person entitled thereto (if the stock is then represented by certificates), cancel the old certificate and record the transaction upon its books.

Each certificated share of stock shall be signed, countersigned and registered in such manner as the Board may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

SECTION 6.2. Lost, Stolen or Destroyed Certificates. No certificate for shares or uncertificated shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board or any financial officer may in its or his discretion require.

SECTION 6.3. Ownership of Shares. The Corporation shall be entitled to treat the holder of record of any share or shares of stock of the Corporation as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

SECTION 6.4. Regulations Regarding Certificates. The Board shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of stock of the Corporation. The Corporation may enter into additional agreements with stockholders to restrict the transfer of stock of the Corporation in any manner not prohibited by the DGCL.

ARTICLE VII MISCELLANEOUS PROVISIONS

SECTION 7.1. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January and end on the thirty-first day of December of each year.

SECTION 7.2. Dividends. Except as otherwise provided by law or the Certificate of Incorporation, the Board may from time to time declare, and the Corporation may pay, dividends on its outstanding shares of stock, which dividends may be paid in either cash, property or shares of stock of the Corporation. A member of the Board, or a member of any committee designated by the Board, shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

SECTION 7.3. Seal. The seal of the Corporation, if any, shall be in such form as the Board may adopt.

SECTION 7.4. Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, including by electronic transmission, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board or committee thereof need be specified in any waiver of notice of such meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 7.5. Resignations. Any director or any officer, whether elected or appointed, may resign at any time by giving written notice, including by electronic transmission, of such resignation to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the Chief Executive Officer, the President or the Secretary, or at such later time as is specified therein. No formal action shall be required of the Board or the stockholders to make any such resignation effective.

SECTION 7.6. Indemnification and Advancement of Expenses.

(A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “proceeding”) by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (a “Covered Person”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all expenses, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such proceeding.

(B) The Corporation shall, to the fullest extent not prohibited by applicable law as it presently exists or may hereafter be amended, pay the expenses (including attorneys’ fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition; provided, however, that to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Section 7.6 or otherwise.

(C) The rights to indemnification and advancement of expenses under this Section 7.6 shall be contract rights and such rights shall continue as to a Covered Person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 7.6, except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

(D) If a claim for indemnification under this Section 7.6 (following the final disposition of such proceeding) is not paid in full within 60 days after the Corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Section 7.6 is not paid in full within 30 days after the Corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by applicable law. In any such action, the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

(E) The rights conferred on any Covered Person by this Section 7.6 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, any provision of the Certificate of Incorporation, these Bylaws, any agreement or vote of stockholders or disinterested directors or otherwise.

(F) This Section 7.6 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

(G) Any Covered Person entitled to indemnification and/or advancement of expenses, in each case pursuant to this Section 7.6, may have certain rights to indemnification, advancement and/or insurance provided by one or more persons with whom or which such Covered Person may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with respect to any proceeding, expense, liability or matter that is the subject of this Section 7.6, (ii) the Corporation shall be primarily liable for all such obligations and any indemnification afforded to a Covered Person in respect of a proceeding, expense, liability or matter that is the subject of this Section 7.6, whether created by law, organizational or constituent documents, contract or otherwise, (iii) any obligation of any persons with whom or which a Covered Person may be associated to indemnify such Covered Person and/or advance expenses or liabilities to such Covered Person in respect of any proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify each Covered Person and advance expenses to each Covered Person hereunder to the fullest extent provided herein without regard to any rights such Covered Person may have against any other person with whom or which such Covered Person

may be associated or insurer of any such person, and (v) the Corporation irrevocably waives, relinquishes and releases any other person with whom or which a Covered Person may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder.

SECTION 7.7. Notices. Except as otherwise specifically provided herein or required by applicable law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by commercial courier service, or by facsimile or other electronic transmission, *provided* that notice to stockholders by electronic transmission shall be given in the manner provided in Section 232 of the DGCL. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his last known address as the same appears on the books of the Corporation. Without limiting the manner by which notice otherwise may be given effectively, notice to any stockholder shall be deemed given: (1) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (4) if by any other form of electronic transmission, when directed to the stockholder; and (5) if by mail, when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

SECTION 7.8. Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board or a committee thereof.

SECTION 7.9. Time Periods. In applying any provision of these Bylaws that require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

SECTION 7.10. Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his duties, be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE VIII AMENDMENTS

SECTION 8.1. Amendments. Subject to the provisions of the Certificate of Incorporation, these Bylaws may be amended, altered or repealed (a) by resolution adopted by a

majority of the directors present at any special or regular meeting of the Board at which a quorum is present if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting or (b) at any regular or special meeting of the stockholders upon the affirmative vote of at least $66\frac{2}{3}\%$ of the shares of the Corporation entitled to vote in the election of directors if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting.

Notwithstanding the foregoing, Sections 3.9 and 3.10 and this paragraph of Section 8.1 may only be amended, altered or repealed at any regular or special meeting of the stockholders upon the affirmative vote of at least $66\frac{2}{3}\%$ of the shares of the Corporation entitled to vote thereon if, in the case of such special meeting only, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting.

Notwithstanding the foregoing, no amendment, alteration or repeal of Section 7.6 shall adversely affect any right or protection existing under these Bylaws immediately prior to such amendment, alteration or repeal, including any right or protection of a present or former director, officer or employee thereunder in respect of any act or omission occurring prior to the time of such amendment.

ANNEX C

LLC AGREEMENT

(see attached)

**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
SPARK HOLDCO, LLC
DATED AS OF AUGUST 1, 2014**

THE LIMITED LIABILITY COMPANY INTERESTS IN SPARK HOLDCO, LLC HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, THE SECURITIES LAWS OF ANY STATE, OR ANY OTHER APPLICABLE SECURITIES LAWS, AND ARE BEING SOLD IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. SUCH INTERESTS MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT, ANY APPLICABLE SECURITIES LAWS OF ANY STATE AND ANY OTHER APPLICABLE SECURITIES LAWS; (II) THE TERMS AND CONDITIONS OF THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT; AND (III) ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BETWEEN THE MANAGING MEMBER AND THE APPLICABLE MEMBER. THE LIMITED LIABILITY COMPANY INTERESTS MAY NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS, THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT, AND ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BY THE MANAGING MEMBER AND THE APPLICABLE MEMBER. THEREFORE, PURCHASERS AND OTHER TRANSFEREES OF SUCH LIMITED LIABILITY COMPANY INTERESTS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT OR ACQUISITION FOR AN INDEFINITE PERIOD OF TIME.

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**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

**OF
SPARK HOLDCO, LLC**

This SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (as amended, supplemented or restated from time to time, this “*Agreement*”) is entered into as of August 1, 2014, by and among SPARK HOLDCO, LLC, a Delaware limited liability company (the “*Company*”), and each other Person who is or at any time becomes a Member in accordance with the terms of this Agreement and the Act. Capitalized terms used herein and not otherwise defined have the respective meanings set forth in Section 1.1.

RECITALS

WHEREAS, the Company was formed pursuant to a Certificate of Formation filed in the office of the Secretary of State of the State of Delaware on April 22, 2014;

WHEREAS, in connection with the execution and delivery of the Transaction Agreement, dated as of June 18, 2014, by and among the Company, Spark Energy Ventures, LLC, a Texas limited liability company (“*SEV*”), Spark Energy, Inc., a Delaware corporation (“*SEI*”), Spark Energy Holdings, LLC, Texas limited liability company, NuDevo Retail, LLC, a Delaware limited liability company (“*NuDevco Retail*”) and NuDevco Retail Holdings, LLC, a Texas limited liability company (“*NuDevco Retail Holdings*”) and the consummation of the transactions contemplated thereby, NuDevco Retail, NuDevco Retail Holdings and SEI entered into the Amended and Restated Limited Liability Company Agreement of the Company, dated as of June 18, 2014 (the “*Existing LLC Agreement*”), pursuant to which SEI was admitted as the sole managing member of the Company (in its capacity as managing Member as well as in any other capacity, the “*Managing Member*”);

WHEREAS, SEI has entered into an underwriting agreement with the several underwriters named therein, providing for the initial public offering (the “*IPO*”) of up to 3,000,000 shares of Class A Stock (plus up to an additional 450,000 shares pursuant to an option granted to the underwriters named therein);

WHEREAS, it is contemplated that pursuant to the Transaction Agreement II, dated as of July 30, 2014, by and among the Company, SEI, NuDevco Retail, NuDevco Retail Holdings, SEV, NuDevco Partners Holdings, LLC, a Texas limited liability company and Associated Energy Services, LP, a Texas limited partnership, the parties to that agreement will effect various transactions in connection with the IPO (the “*IPO Transactions*”);

WHEREAS, the Members of the Company consist of those Persons listed on Exhibit A as of the date hereof;

WHEREAS, the Members of the Company desire to amend and restate the Existing LLC Agreement to reflect the IPO Transactions and to provide for, among other things, the exchange rights set forth in Section 3.7; and

WHEREAS, this Agreement shall supersede the Existing LLC Agreement in its entirety as of the date hereof;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Definitions**. (a) As used in this Agreement and the Schedules and Exhibits attached to this Agreement, the following definitions shall apply:

“**Act**” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time (or any corresponding provisions of succeeding law).

“**Action**” means any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Entity.

“**Adjusted Basis**” has the meaning given such term in Section 1011 of the Code.

“**Adjusted Capital Account Deficit**” means the deficit balance, if any, in such Member’s Capital Account at the end of any Fiscal Year, with the following adjustments:

(a) credit to such Capital Account any amount that such Member is obligated to restore under Treasury Regulations Section 1.704-1(b)(2)(ii)(c), as well as any addition thereto pursuant to the next to last sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) after taking into account thereunder any changes during such year in Company Minimum Gain and in the minimum gain attributable to any Member Nonrecourse Debt; and

(b) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. For these purposes, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; provided that, for purposes of this Agreement, (i) no Member shall be deemed an Affiliate of the Company or any of its Subsidiaries and (ii) none of the Company or any of its Subsidiaries shall be deemed an Affiliate of any Member.

“**Agreement**” is defined in the preamble.

“**Assumed Tax Liability**” means, with respect to any taxable year, an amount equal to (a) the cumulative amount of federal, state and local income taxes (including any applicable estimated taxes), determined taking into account the character of income and loss allocated as it affects the applicable tax rate, due from SEI in all prior taxable years and that the Managing Member estimates as of such Tax Distribution Date would be due from SEI in such taxable year, (i) assuming SEI earned solely the items of income, gain, deduction, loss, and/or credit allocated to it pursuant to Article IV, (ii) after taking proper account of loss carryforwards available to SEI resulting from losses allocated to SEI by the Company, to the extent not taken into account in prior periods, minus (b) prior distributions made pursuant to Section 5.2(a). For purposes of determining the Assumed Tax Liability of SEI, adjustments by reason of Sections 734(b) or 743(b) of the Code shall be taken into account.

“**beneficially own**” and “**beneficial owner**” shall be as defined in Rule 13d-3 of the rules promulgated under the Exchange Act.

“**Business Day**” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of Houston, Texas.

“ **Call Election Notice** ” is defined in Section 3.7(g)(ii).

“ **Call Right** ” has the meaning set forth in Section 3.7(g)(i).

“ **Capital Account** ” means, with respect to any Member, the Capital Account maintained for such Member in accordance with Section 3.4.

“ **Capital Contributions** ” means, with respect to any Member, the amount of cash and the initial Gross Asset Value of any property (other than cash) contributed to the Company by such Member. Any reference to the Capital Contributions of a Member will include the Capital Contributions made by a predecessor holder of such Member’s Units to the extent the Capital Contribution was made in respect of Units Transferred to such Member.

“ **Cash Election** ” is defined in Section 3.7(a)(ii).

“ **Cash Election Amount** ” means with respect to a particular Exchange, an amount of cash equal to the value of the shares of Class A Stock that would be received in such Exchange as of the date of receipt by the Company of the Exchange Notice with respect to such Exchange pursuant to Section 3.7 (the “ **Valuation Date** ”), decreased by any distributions received by the Exchanging Member with respect to the Units that are the subject of the Exchange following the date of receipt by the Company of the Exchange Notice where the record date for such distribution was after the date of receipt of such notice. For this purpose, the value of a share of Class A Stock shall equal (i) if shares of Class A Stock are then admitted to trading on a National Securities Exchange, the volume weighted average price on such exchange of a share of Class A Stock for the 30 trading days ending on the trading day prior to the Valuation Date or (ii) in the event shares of Class A Stock are not then admitted to trading on a National Securities Exchange, the value, as reasonably determined by the Managing Member in good faith, that would be obtained in an arm’s length transaction for cash between an informed and willing buyer and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, and without regard to the particular circumstances of the buyer or seller.

“ **Class A Stock** ” shall, as applicable, (i) mean the Class A Common Stock, par value \$0.01 per share, of SEI or (ii) following any consolidation, merger, reclassification or other similar event involving SEI, mean any shares or other securities of SEI or any other Person or cash or other property that become payable in consideration for the Class A Stock or into which the Class A Stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“ **Class B Stock** ” shall, as applicable, (i) mean the Class B Common Stock, par value \$0.01 per share, of SEI or (ii) following any consolidation, merger, reclassification or other similar event involving SEI, mean any shares or other securities of SEI or any other Person or cash or other property that become payable in consideration for the Class B Stock or into which the Class B Stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“ **Code** ” means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

“ **Commission** ” means the U.S. Securities and Exchange Commission.

“ **Company** ” is defined in the preamble to this Agreement.

“ **Company Minimum Gain** ” has the meaning of “partnership minimum gain” set forth in Treasury Regulations Sections 1.704-2(b)(2) and -2(d). It is further understood that Company Minimum Gain shall be determined in a manner consistent with the rules of Treasury Regulations Section 1.702-2(b)(2), including the requirement that if the adjusted Gross Asset Value of property subject to one or more Nonrecourse Liabilities differs from its adjusted tax basis, Company Minimum Gain shall be determined with reference to such Gross Asset Value.

“ **Contract** ” means any written agreement, contract, lease, sublease, license, sublicense, obligation, promise or undertaking.

“**control**” (including the terms “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

“**Depreciation**” means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that (a) with respect to any such property the Gross Asset Value of which differs from its Adjusted Basis for federal income tax purposes and which difference is being eliminated by use of the “remedial method” pursuant to Treasury Regulations Section 1.704-3(d), Depreciation for such Fiscal Year shall be the amount of book basis recovered for such Fiscal Year under the rules prescribed by Treasury Regulations Section 1.704-3(d)(2), and (b) with respect to any other such property the Gross Asset Value of which differs from its Adjusted Basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning Adjusted Basis; *provided, however*, that if the Adjusted Basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation with respect to such asset shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Tax Matters Member.

“**DGCL**” means the General Corporation Law of the State of Delaware, as amended from time to time (or any corresponding provisions of succeeding law).

“**Equity Securities**” means (a) with respect to a partnership, limited liability company or similar Person, any and all units, interests, rights to purchase, warrants, options or other equivalents of, or other ownership interests in, any such Person as well as debt or equity instruments convertible, exchangeable or exercisable into any such units, interests, rights or other ownership interests and (b) with respect to a corporation, any and all shares, interests, participation or other equivalents (however designated) of corporate stock, including all common stock and preferred stock, or warrants, options or other rights to acquire any of the foregoing, including any debt instrument convertible or exchangeable into any of the foregoing.

“**Exchange**” has the meaning set forth in Section 3.7(a).

“**Exchange Act**” means the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, as the same may be amended from time to time (or any corresponding provisions of succeeding law).

“**Exchange Date**” is defined in Section 3.7(c).

“**Exchange Notice**” is defined in Section 3.7(b).

“**Exchanging Member**” is defined in Section 3.7(b).

“**Existing LLC Agreement**” is defined in the recitals to this Agreement.

“**Fair Market Value**” means the fair market value of any property as determined in good faith by the Managing Member after taking into account such factors as the Managing Member shall deem appropriate.

“**Fiscal Year**” means the fiscal year of the Company, which shall end on December 31 of each calendar year unless, for federal income tax purposes, another fiscal year is required. The Company shall have the same fiscal year for federal income tax purposes and for accounting purposes.

“**GAAP**” means generally acceptable accounting principles at the time.

“ **Good Faith** ” means a Person having acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to a criminal proceeding, having had no reasonable cause to believe such Person’s conduct was unlawful.

“ **Governmental Entity** ” means any federal, national, supranational, state, provincial, local, foreign or other government, governmental, stock exchange, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

“ **Gross Asset Value** ” means, with respect to any asset, the asset’s Adjusted Basis for federal income tax purposes, except as follows:

(a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset as of the date of such contribution;

(b) the Gross Asset Values of all Company assets shall be adjusted to equal their respective gross Fair Market Values as of the following times: (i) the acquisition of an interest (or additional interest) in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution to the Company or in exchange for the performance of more than a *de minimis* amount of services to or for the benefit of the Company; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for an interest in the Company; (iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)(1) (other than pursuant to Code Section 708(b)(1)(B)); (iv) the acquisition of an interest in the Company by any new or existing Member upon the exercise of a noncompensatory option in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(s); or (v) any other event to the extent determined by the Managing Member to be permitted and necessary to properly reflect Gross Asset Values in accordance with the standards set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(q); *provided* , however, that adjustments pursuant to clauses (i), (ii) and (iv) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company. If any noncompensatory options are outstanding upon the occurrence of an event described in this paragraph (b)(i) through (b)(v), the Company shall adjust the Gross Asset Values of its properties in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f)(1) and 1.704-1(b)(2)(iv)(h)(2);

(c) the Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross Fair Market Value of such asset on the date of such distribution;

(d) the Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subsection (f) in the definition of “Profits” or “Losses” below or Section 4.2(g); *provided* , however, that the Gross Asset Value of a Company asset shall not be adjusted pursuant to this subsection to the extent the Managing Member determines that an adjustment pursuant to subsection (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d); and

(e) if the Gross Asset Value of a Company asset has been determined or adjusted pursuant to subsections (a), (b) or (d) of this definition of Gross Asset Value, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits, Losses and other items allocated pursuant to Article IV.

“ **Indebtedness** ” means (a) all indebtedness for borrowed money (including capitalized lease obligations, sale-leaseback transactions or other similar transactions, however evidenced), (b) any other indebtedness that is evidenced by a note, bond, debenture, draft or similar instrument, (c) notes payable and (d) lines of credit and any other agreements relating to the borrowing of money or extension of credit.

“ **Interest** ” means the entire interest of a Member in the Company, including the Units and all of such Member’s rights, powers and privileges under this Agreement and the Act.

“**IPO**” is defined in the recitals to this Agreement.

“**IPO Date Capital Account Balance**” means, with respect to any Member, the positive Capital Account balance of such Member as of the date hereof, the amount or deemed value of which is set forth on Exhibit A.

“**IPO Transactions**” is defined in the recitals to this Agreement.

“**Law**” means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

“**Legal Action**” is defined in Section 11.7.

“**Liability**” means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

“**Liquidating Events**” is defined in Section 10.1.

“**Loss**” means any and all losses, damages, claims, costs and expenses, interest, awards, judgments and penalties (including reasonable attorneys’ fees and expenses, but excluding any allocation of corporate overhead, internal legal department costs and other internal costs and expenses).

“**Managing Member**” is defined in the recitals to this Agreement.

“**Member**” means any Person that executes this Agreement as a Member, and any other Person admitted to the Company as an additional or substituted Member, that has not made a disposition of such Person’s entire Interest.

“**Member Minimum Gain**” has the meaning ascribed to “partner nonrecourse debt minimum gain” set forth in Treasury Regulations Section 1.704-2(i). It is further understood that the determination of Member Minimum Gain and the net increase or decrease in Member Minimum Gain shall be made in the same manner as required for such determination of Company Minimum Gain under Treasury Regulations Sections 1.704-2(d) and -2(g)(3).

“**Member Nonrecourse Debt**” has the meaning of “partner nonrecourse debt” set forth in Treasury Regulations Section 1.704-2(b)(4).

“**Member Nonrecourse Deductions**” has the meaning of “partner nonrecourse deductions” set forth in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

“**National Securities Exchange**” means an exchange registered with the Commission under the Exchange Act.

“**Nonrecourse Deductions**” has the meaning assigned that term in Treasury Regulations Section 1.704-2(b).

“**Nonrecourse Liability**” is defined in Treasury Regulations Section 1.704-2(b)(3).

“**NuDevco Retail**” is defined in the recitals to this Agreement.

“**NuDevco Retail Holdings**” is defined in the recitals to this Agreement.

“**Officer**” means each Person designated as an officer of the Company pursuant to and in accordance with the provisions of Section 6.2, subject to any resolution of the Managing Member appointing such Person as an officer or relating to such appointment.

“ **Permitted Transferee** ” means, with respect to any Member, (a) any Affiliate of such Member; (b) any successor entity of such Member; (c) a trust established by or for the benefit of a Member of which only such Member and his or her immediate family members are beneficiaries; (d) any Person established for the benefit of, and beneficially owned solely by, an entity Member or the sole individual direct or indirect owner of an entity Member; and (d) upon an individual Member’s death, an executor, administrator or beneficiary of the estate of the deceased Member.

“ **Person** ” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“ **Plan Asset Regulations** ” means the regulations issued by the U.S. Department of Labor at Section 2510.3-101 of Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations, or any successor regulations as the same may be amended from time to time.

“ **President and Chief Executive Officer** ” is defined in Section 6.2(b).

“ **Prime Rate** ” means, on any date of determination, a rate per annum equal to the rate of interest most recently published by The Wall Street Journal as the “prime rate” at large U.S. money center banks.

“ **Proceeding** ” is defined in Section 6.4.

“ **Profits** ” or “ **Losses** ” means, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) any income or gain of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*i*), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any Company asset is adjusted pursuant to subsection (b) or (c) of the definition of Gross Asset Value above, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the Company asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the Company asset) from the disposition of such asset and shall, except to the extent allocated pursuant to Section 4.2, be taken into account for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(e) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation;

(f) to the extent an adjustment to the adjusted tax basis of any asset pursuant to Code Section 734(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*)(4), to be taken into account in determining Capital Account balances as a result of a distribution other than in liquidation of a Member’s interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or an item of loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) any items of income, gain, loss or deduction which are specifically allocated pursuant to the provisions of Section 4.2 shall not be taken into account in computing Profits or Losses for any taxable year, but such items available to be specially allocated pursuant to Section 4.2 will be determined by applying rules analogous to those set forth in subparagraphs (a) through (f) above.

“ **Property** ” means all real and personal property owned by the Company from time to time, including both tangible and intangible property.

“ **SEI** ” is defined in the recitals to this Agreement.

“ **SEI Common Stock** ” means all classes and series of common stock of SEI, including the Class A Stock and Class B Stock.

“ **SEI Offer** ” is defined in Section 3.7(h).

“ **Quarterly Distribution Date** ” means the date on which SEI pays a dividend to the holders of its Class A Stock.

“ **Reclassification Event** ” means any of the following: (i) any reclassification or recapitalization of SEI Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination or any transaction subject to Section 3.1(g)), (ii) any merger, consolidation or other combination involving the Managing Member, or (iii) any sale, conveyance, lease, or other disposal of all or substantially all the properties and assets of the Managing Member to any other Person, in each of clauses (i), (ii) or (iii), as a result of which holders of SEI Common Stock shall be entitled to receive cash, securities or other property for their shares of SEI Common Stock.

“ **Regulatory Allocations** ” is defined in Section 4.2(h).

“ **Revocation Notice** ” is defined in Section 3.7(g)(ii).

“ **Securities Act** ” means the Securities Act of 1933, and the rules and regulations promulgated thereunder, as the same may be amended from time to time (or any corresponding provisions of succeeding law).

“ **Subsidiary** ” means, with respect to any specified Person, any other Person with respect to which such specified Person (a) has, directly or indirectly, the power, through the ownership of securities or otherwise, to elect a majority of directors or similar managing body or (b) beneficially owns, directly or indirectly, a majority of such Person’s Equity Securities.

“ **Target Distribution** ” is defined in the Tax Receivable Agreement.

“ **Tax Advance** ” has the meaning set forth in Section 5.2(d).

“ **Tax Distribution Date** ” means any date that is two Business Days prior to the date on which estimated federal income tax payments are required to be made by calendar year corporate taxpayers and the due date for federal income tax returns of corporate calendar year taxpayers (without regard to extensions).

“ **Tax Matters Member** ” means the “tax matters partner” as defined in Code Section 6231(a)(7) and as appointed in Section 9.4.

“ **Tax Receivable Agreement** ” means the Tax Receivable Agreement dated as of August 1, 2014, by and among the Company, SEI, NuDevco Retail, NuDevco Retail Holdings and W. Keith Maxwell III, as the same may be amended, supplemented or restated from time to time.

“ **Transfer** ” means, as a noun, any voluntary or involuntary, direct or indirect (whether through a change of control of the Transferor or any Person that controls the Transferor, the issuance or transfer of Equity Securities of

the Transferor, by operation of law or otherwise), transfer, sale, pledge or hypothecation or other disposition and, as a verb, voluntarily or involuntarily, directly or indirectly (whether through a change of control of the Transferor or any Person that controls the Transferor, the issuance or transfer of Equity Securities of the Transferor or any Person that controls the Transferor, by operation of law or otherwise), to transfer, sell, pledge or hypothecate or otherwise dispose of. The terms “Transferee,” “Transferor,” “Transferred,” and other forms of the word “Transfer” shall have the correlative meanings.

“**TRA Payment Date**” means each “Payment Date,” as defined in the Tax Receivable Agreement. For the avoidance of doubt, each TRA Payment Date shall be determined without taking into account any payment deferrals to which SEI is entitled under the terms of the Tax Receivable Agreement.

“**Transfer Agent**” is defined in Section 3.7(b).

“**Treasury Regulations**” means pronouncements, as amended from time to time, or their successor pronouncements, which clarify, interpret and apply the provisions of the Code, and which are designated as “Treasury Regulations” by the United States Department of the Treasury.

“**Units**” means the Units issued hereunder and shall also include any equity security issued in respect of or in exchange for Units, whether by way of dividend or other distribution, split, recapitalization, merger, rollup transaction, consolidation, conversion or reorganization.

“**Valuation Date**” is defined in the definition of “Cash Election Amount.”

“**Winding-Up Member**” is defined in Section 10.3(a).

Section 1.2 **Interpretive Provisions**. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in Section 1.1 have the meanings assigned to them in Section 1.1 and are applicable to the singular as well as the plural forms of such terms;

(b) all accounting terms not otherwise defined herein have the meanings assigned under GAAP;

(c) all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars;

(d) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(e) whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”;

(f) “or” is not exclusive;

(g) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms; and

(h) the words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

ARTICLE II

ORGANIZATION OF THE LIMITED LIABILITY COMPANY

Section 2.1 **Formation**. The Company has been formed as a limited liability company subject to the provisions of the Act upon the terms, provisions and conditions set forth in this Agreement.

Section 2.2 **Filing**. The Company's Certificate of Formation has been filed with the Secretary of State of the State of Delaware in accordance with the Act. The Members shall execute such further documents (including amendments to such Certificate of Formation) and take such further action as is appropriate to comply with the requirements of Law for the formation or operation of a limited liability company in Delaware and in all states and counties where the Company may conduct its business.

Section 2.3 **Name**. The name of the Company is "SPARK HOLDCO, LLC" and all business of the Company shall be conducted in such name or, in the discretion of the Managing Member, under any other name.

Section 2.4 **Registered Office; Registered Agent**. The location of the registered office of the Company in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, or at such other place as the Managing Member from time to time may select. The name and address for service of process on the Company in the State of Delaware are Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, or such other qualified Person as the Managing Member may designate from time to time and its business address.

Section 2.5 **Principal Place of Business**. The principal place of business of the Company shall be located in such place as is determined by the Managing Member from time to time.

Section 2.6 **Purpose; Powers**. The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Act. The Company shall have the power and authority to take any and all actions and engage in any and all activities necessary, appropriate, desirable, advisable, ancillary or incidental to the accomplishment of the foregoing purpose.

Section 2.7 **Term**. The term of the Company commenced on the date of filing of the Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware in accordance with the Act and shall continue indefinitely. The Company may be dissolved and its affairs wound up only in accordance with Article X.

Section 2.8 **Intent**. It is the intent of the Members that the Company be operated in a manner consistent with its treatment as a "partnership" for federal and state income tax purposes. It is also the intent of the Members that the Company not be operated or treated as a "partnership" for purposes of Section 303 of the Federal Bankruptcy Code. Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in this Section 2.8.

ARTICLE III

OWNERSHIP AND CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 3.1 **Authorized Units; General Provisions With Respect to Units**.

(a) Subject to the provisions of this Agreement, the Company shall be authorized to issue from time to time such number of Units and such other Equity Securities as the Managing Member shall determine in accordance with Section 3.3. Each authorized Unit may be issued pursuant to such agreements as the Managing Member shall approve, including pursuant to options and warrants. The Company may reissue any Units that have been repurchased or acquired by the Company.

(b) Each outstanding Unit shall be identical (except with respect to vesting and as provided in Section 3.3).

(c) Initially, none of the Units will be represented by certificates. If the Managing Member determines that it is in the interest of the Company to issue certificates representing the Units, certificates will be issued and the Units will be represented by those certificates, and this Agreement shall be amended as necessary or desirable to reflect the issuance of certificated Units for purposes of the Uniform Commercial Code. Nothing contained in this Section 3.1(c) shall be deemed to authorize or permit any Member to Transfer its Units except as otherwise permitted under this Agreement.

(d) The total number of Units issued and outstanding and held by the Members is set forth on Exhibit A (as amended from time to time in accordance with the terms of this Agreement) as of the date set forth therein.

(e) If at any time SEI issues a share of its Class A Stock (subsequent to the IPO) or any other Equity Security of SEI (other than shares of Class B Stock), (i) the Company shall issue to SEI one Unit (if SEI issues a share of Class A Stock), or such other Equity Security of the Company (if SEI issues Equity Securities other than Class A Stock) corresponding to the Equity Securities issued by SEI, and with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Securities of SEI and (ii) the net proceeds received by SEI with respect to the corresponding share of Class A Stock or other Equity Security, if any, shall be concurrently transferred to the Company; *provided, however*, that if SEI issues any shares of Class A Stock in order to purchase or fund the purchase from a Member of a number of Units (and shares of Class B Stock) equal to the number of shares of Class A Stock so issued, then the Company shall not issue any new Units in connection therewith and SEI shall not be required to transfer any net proceeds of such issuance to the Company (it being understood that any such net proceeds shall instead be transferred to the selling Member as consideration for such purchase). Notwithstanding the foregoing, this Section 3.1(e) shall not apply to the issuance and distribution to holders of shares of SEI Common Stock of rights to purchase Equity Securities of SEI under a “poison pill” or similar shareholders rights plan (it being understood that upon exchange of Units for Class A Stock, such Class A Stock will be issued together with a corresponding right), or to the issuance under SEI’s employee benefit plans of any warrants, options, other rights to acquire Equity Securities of SEI or rights or property that may be converted into or settled in Equity Securities of SEI, but shall in each of the foregoing cases apply to the issuance of Equity Securities of SEI in connection with the exercise or settlement of such rights, warrants, options or other rights or property. Except pursuant to Section 3.7, (x) the Company may not issue any additional Units to SEI or any of its Subsidiaries unless simultaneously SEI or such Subsidiary issues or sells an equal number of shares of SEI’s Class A Stock to another Person, and (y) the Company may not issue any other Equity Securities of the Company to SEI or any of its Subsidiaries unless simultaneously SEI or such Subsidiary issues or sells, to another Person, an equal number of shares of a new class or series of Equity Securities of SEI or such Subsidiary with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Securities of the Company.

(f) SEI or any of its Subsidiaries may not redeem, repurchase or otherwise acquire (i) any shares of Class A Stock (including upon forfeiture of any unvested shares of Class A Stock) unless simultaneously the Company redeems, repurchases or otherwise acquires from SEI an equal number of Units for the same price per security or (ii) any other Equity Securities of SEI unless simultaneously the Company redeems, repurchases or otherwise acquires from SEI an equal number of Equity Securities of the Company of a corresponding class or series with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Securities of SEI for the same price per security. Except pursuant to Section 3.7, the Company may not redeem, repurchase or otherwise acquire (A) any Units from SEI or any of its Subsidiaries unless simultaneously SEI or such Subsidiary redeems, repurchases or otherwise acquires an equal number of shares of Class A Stock for the same price per security from holders thereof, or (B) any other Equity Securities of the Company from SEI or any of its Subsidiaries unless simultaneously SEI or such Subsidiary redeems, repurchases or otherwise acquires for the same price per security an equal number of Equity Securities of SEI of a corresponding class or series with substantially the same rights to dividends and distributions (including distribution upon liquidation) and other economic rights as those of such Equity Securities of SEI. Notwithstanding the foregoing, to the extent that any consideration payable by SEI in connection with the redemption or repurchase of any shares of Class A Stock or other Equity Securities of SEI or any of its Subsidiaries consists (in whole or in part) of shares of Class A Stock or such other Equity Securities (including, for the avoidance of doubt, in connection with the cashless exercise of an option or warrant), then the redemption or repurchase of the corresponding Units or other Equity Securities of the Company shall be effectuated in an equivalent manner.

(g) The Company shall not in any manner effect any subdivision (by any stock split, stock dividend, reclassification, recapitalization or otherwise) or combination (by reverse stock split, reclassification, recapitalization or otherwise) of the outstanding Units unless accompanied by an identical subdivision or combination, as applicable, of the outstanding SEI Common Stock, with corresponding changes made with respect

to any other exchangeable or convertible securities. SEI shall not in any manner effect any subdivision (by any stock split, stock dividend, reclassification, recapitalization or otherwise) or combination (by reverse stock split, reclassification, recapitalization or otherwise) of the outstanding SEI Common Stock unless accompanied by an identical subdivision or combination, as applicable, of the outstanding Units, with corresponding changes made with respect to any other exchangeable or convertible securities.

Section 3.2 **Voting Rights**. No Member has any voting right except with respect to those matters specifically reserved for a Member vote under the Act and for matters expressly requiring the approval of Members under this Agreement. Except as otherwise required by the Act, each Unit will entitle the holder thereof to one vote on all matters to be voted on by the Members. Except as otherwise expressly provided in this Agreement, the holders of Units having voting rights will vote together as a single class on all matters to be approved by the Members.

Section 3.3 **Capital Contributions; Unit Ownership**.

(a) *Capital Contributions*. Each Member named on Exhibit A shall be credited with the IPO Date Capital Account Balance set forth on Exhibit A in respect of its Interest specified thereon. No Member shall be required to make additional Capital Contributions.

(b) *Issuance of Additional Units or Interests*. Except as otherwise expressly provided in this Agreement, the Managing Member shall have the right to authorize and cause the Company to issue on such terms (including price) as may be determined by the Managing Member (i) subject to the limitations of Section 3.1, additional Units or other Equity Securities in the Company (including creating preferred interests or other classes or series of securities having such rights, preferences and privileges as determined by the Managing Member), and (ii) obligations, evidences of Indebtedness or other securities or interests convertible or exchangeable for Units or other Equity Securities in the Company; provided that, at any time following the date hereof, in each case the Company shall not issue Equity Securities in the Company to any Person unless such Person shall have executed a counterpart to this Agreement and all other documents, agreements or instruments deemed necessary or desirable in the discretion of the Managing Member. In that event, the Managing Member shall amend Exhibit A to reflect such additional issuances.

Section 3.4 **Capital Accounts**. A Capital Account shall be maintained for each Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and, to the extent consistent with such regulations, the other provisions of this Agreement. The Capital Account balance of each of the Members as of the date hereof is its respective IPO Date Capital Account Balance set forth on Exhibit A. Thereafter, each Member's Capital Account shall be (a) increased by (i) allocations to such Member of Profits pursuant to Section 4.1 and any other items of income or gain allocated to such Member pursuant to Section 4.2, (ii) the amount of additional cash or the initial Gross Asset Value of any asset (net of any Liabilities assumed by the Company and any Liabilities to which the asset is subject) contributed to the Company by such Member, and (iii) any other increases allowed or required by Treasury Regulations Section 1.704-1(b)(2)(iv), and (b) decreased by (i) allocations to such Member of Losses pursuant to Section 4.1 and any other items of deduction or loss allocated to such Member pursuant to the provisions of Section 4.2, (ii) the amount of any cash or the Gross Asset Value of any asset (net of any Liabilities assumed by the Company and any Liabilities to which the asset is subject) distributed to such Member, and (iii) any other decreases allowed or required by Treasury Regulations Section 1.704-1(b)(2)(iv). In the event of a Transfer of Units made in accordance with this Agreement, the Capital Account of the Transferor that is attributable to the Transferred Units shall carry over to the Transferee Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv)(l).

Section 3.5 **Reserved**.

Section 3.6 **Other Matters**.

(a) No Member shall demand or receive a return on or of its Capital Contributions or withdraw from the Company without the consent of the Managing Member. Under circumstances requiring a return of any Capital Contributions, no Member has the right to receive property other than cash.

(b) No Member shall receive any interest, salary, compensation, draw or reimbursement with respect to its Capital Contributions or its Capital Account, or for services rendered or expenses incurred on behalf of the Company or otherwise in its capacity as a Member, except as otherwise provided in or contemplated by this Agreement.

(c) The Liability of each Member shall be limited as set forth in the Act and other applicable Law and, except as expressly set forth in this Agreement or required by Law, no Member (or any of its Affiliates) shall be personally liable, whether to the Company, to any of the other Members, to the creditors of the Company, or to any other third party, for any debt or Liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Company.

(d) Except as otherwise required by the Act, a Member shall not be required to restore a deficit balance in its Capital Account, to lend any funds to the Company or to make any additional contributions or payments to the Company.

(e) The Company shall not be obligated for the repayment of any Capital Contributions of any Member.

Section 3.7 Exchange of Units .

(a) (i) Subject to adjustment as provided in Section 3.7(d) and subject to SEI's rights described in Section 3.7(g), each of the Members other than SEI shall be entitled to exchange with the Company, at any time and from time to time, any or all of such Member's Units (together with the same number of shares of Class B Stock) for an equivalent number of shares of Class A Stock (an "**Exchange**") or, at the Company's election made in accordance with Section 3.7(a)(ii), cash equal to the Cash Election Amount calculated with respect to such Exchange. Each Exchange shall be treated for federal income tax purposes as a sale of the Exchanging Member's Units (together with the same number of shares of Class B Stock) to SEI in exchange for shares of Class A Stock or cash, as applicable.

(ii) Upon receipt of an Exchange Notice, the Company shall be entitled to elect (a "**Cash Election**") to settle the Exchange by the delivery to the Exchanging Member, in lieu of the applicable number of shares of Class A Stock that would be received in such Exchange, an amount of cash equal to the Cash Election Amount for such Exchange. In order to make a Cash Election with respect to an Exchange, the Company must provide written notice of such election to the Exchanging Member prior to 1:00 pm, Houston time, on the third Business Day after the date on which the Exchange Notice shall have been received by the Company. If the Company fails to provide such written notice prior to such time, it shall not be entitled to make a Cash Election with respect to such Exchange.

(iii) Each Exchanging Member shall be permitted to effect an exchange of Units and shares of Class B Stock pursuant to this Section 3.7 that involves less than 1,000,000 Units no more frequently than on a quarterly basis; *provided, however*, that if an Exchanging Member provides an Exchange Notice with respect to all of the Units and shares of Class B Stock held by such Exchanging Member, such Exchange may occur at any time, subject to this Section 3.7.

(b) In order to exercise the exchange right under Section 3.7(a), the exchanging Member (the "**Exchanging Member**") shall provide written notice (the "**Exchange Notice**") to the Company and SEI, stating that the Exchanging Member elects to exchange with the Company a stated (and equal) number of Units and shares of Class B Stock represented, if applicable, by a certificate or certificates, to the extent specified in such notice, and if the shares of Class A Stock to be received are to be issued other than in the name of the Exchanging Member, specifying the name(s) of the Person(s) in whose name or on whose order the shares of Class A Stock are to be issued, and shall present and surrender the certificate or certificates representing such Units and shares of Class B Stock (in each case, if certificated) during normal business hours at the principal executive offices of the Company, or if any agent for the registration or transfer of Class A Stock is then duly appointed and acting (the "**Transfer Agent**"), at the office of the Transfer Agent with respect to such Class A Stock.

(c) If required by SEI, any certificate for Units and shares of Class B Stock (in each case, if certificated) surrendered for exchange with the Company shall be accompanied by instruments of transfer, in form reasonably satisfactory to SEI and the Transfer Agent (if then duly appointed and acting), duly executed by the Exchanging Member or the Exchanging Member's duly authorized representative. If the Company has not made a valid Cash Election, then as promptly as practicable after the receipt of the Exchange Notice and the surrender to the Company of the certificate or certificates, if any, representing such Units and shares of Class B Stock (but in any event by the Exchange Date, as defined below), SEI shall issue and contribute to the Company, and the Company shall deliver to the Exchanging Member, or on the Exchanging Member's written order, a certificate or certificates, if applicable, for the number of shares of Class A Stock issuable upon the Exchange, and the Company shall deliver such Units and shares of Class B Stock to SEI in exchange for no additional consideration. If the Company has made a valid Cash Election, then as promptly as practicable after the receipt of the Exchange Notice (but in no event more than three Business Days after receipt of the Exchange Notice), upon surrender to the Company of the certificate or certificates, if any, representing such Units and shares of Class B Stock, the Company shall deliver to the Exchanging Member as directed by the Exchanging Member by wire transfer of immediately available funds the Cash Election Amount payable upon the Exchange, and the Company shall deliver such Units and shares of Class B Stock to SEI for no additional consideration. Each Exchange shall be deemed to have been effected on (i) (x) the Business Day after the date on which the Exchange Notice shall have been received by the Company, SEI or the Transfer Agent, as applicable (subject to receipt by the Company, SEI or the Transfer Agent, as applicable, within three Business Days thereafter of any required instruments of transfer as aforesaid) if the Company has not made a valid Cash Election with respect to such Exchange or (y) if the Company has made a valid Cash Election with respect to such Exchange, the first Business Day on which the Company has available funds to pay the Cash Election Amount (but in no event more than three Business Days after receipt of the Exchange Notice), or (ii) such later date specified in or pursuant to the Exchange Notice (such date identified in clause (i) or (ii), as applicable, the "**Exchange Date**"). If the Company has not made a valid Cash Election, and the Person or Persons in whose name or names any certificate or certificates for shares of Class A Stock (which certificates shall bear any legends as may be required in accordance with applicable Law) shall be issuable upon such Exchange as aforesaid shall be deemed to have become, on the Exchange Date, the holder or holders of record of the shares represented thereby. Notwithstanding anything herein to the contrary, unless the Company has made a valid Cash Election, any Exchanging Member may withdraw or amend an Exchange request, in whole or in part, prior to the effectiveness of the applicable Exchange, at any time prior to 5:00 p.m., Houston time, on the Business Day immediately preceding the Exchange Date (or any such later time as may be required by applicable law) by delivery of a written notice of withdrawal to the Company, SEI or the Transfer Agent, specifying (1) the certificate numbers of the withdrawn Units (if any) and shares of Class B Stock, (2) if any, the number of Units and shares of Class B Stock as to which the Exchange Notice remains in effect and (3) if the Exchanging Member so determines, a new Exchange Date or any other new or revised information permitted in an Exchange Notice. An Exchange Notice may specify that the Exchange is to be contingent (including as to timing) upon the consummation of a purchase by another Person (whether in a tender or exchange offer, an underwritten offering or otherwise) of the shares of Class A Stock into which the Units and shares of Class B Stock are exchangeable, or contingent (including as to timing) upon the closing of an announced merger, consolidation or other transaction or event in which the shares of Class A Stock would be exchanged or converted or become exchangeable for or convertible into cash or other securities or property, provided that the foregoing shall not apply to any Exchange with respect to which the Company has made a valid Cash Election.

(d) If (i) there is any reclassification, reorganization, recapitalization or other similar transaction pursuant to which the shares of Class A Stock are converted or changed into another security, securities or other property, or (ii) SEI shall, by dividend or otherwise, distribute to all holders of the shares of Class A Stock evidences of its indebtedness or assets, including securities (including shares of Class A Stock and any rights, options or warrants to all holders of the shares of Class A Stock to subscribe for or to purchase or to otherwise acquire shares of Class A Stock, or other securities or rights convertible into, exchangeable for or exercisable for shares of Class A Stock) but excluding any cash dividend or distribution as well as any such distribution of indebtedness or assets received by SEI from the Company in respect of the Units, then upon any subsequent Exchange, in addition to the shares of Class A Stock or the Cash Election Amount, as applicable, each Member shall be entitled to receive the amount of such security, securities or other property that such Member would have received if such Exchange had occurred immediately prior to the effective date of such reclassification, reorganization, recapitalization, other similar transaction dividend or other distribution, taking into account any adjustment as a result of any subdivision (by any split, distribution or dividend, reclassification, reorganization, recapitalization or otherwise) or combination

(by reverse split, reclassification, recapitalization or otherwise) of such security, securities or other property that occurs after the effective time of such reclassification, reorganization, recapitalization or other similar transaction. For the avoidance of doubt, if there is any reclassification, reorganization, recapitalization or other similar transaction in which the shares of Class A Stock are converted or changed into another security, securities or other property, or any dividend or distribution (other than an excluded dividend or distribution, as described above), this Section 3.7 shall continue to be applicable, mutatis mutandis, with respect to such security or other property. This Agreement shall apply to the Units held by the Members and their Permitted Transferees as of the date hereof, as well as any Units hereafter acquired by a Member and his or her or its Permitted Transferees.

(e) SEI shall at all times keep available, solely for the purpose of issuance upon an Exchange, such number of shares of Class A Stock that shall be issuable upon the Exchange of all such outstanding Units and shares of Class B Stock; provided, that nothing contained herein shall be construed to preclude SEI from satisfying its obligations with respect to an Exchange by delivery of shares of Class A Stock that are held in the treasury of SEI. SEI covenants that all shares of Class A Stock that shall be issued upon an Exchange shall, upon issuance thereof, be validly issued, fully paid and non-assessable. In addition, for so long as the shares of Class A Stock are listed on a National Securities Exchange, SEI shall use its commercially reasonable efforts to cause all shares of Class A Stock issued upon an Exchange to be listed on such National Securities Exchange at the time of such issuance.

(f) The issuance of shares of Class A Stock upon an Exchange shall be made without charge to the Exchanging Member for any stamp or other similar tax in respect of such issuance; *provided*, however, that if any such shares are to be issued in a name other than that of the Exchanging Member, then the Person or Persons in whose name the shares are to be issued shall pay to SEI the amount of any tax that may be payable in respect of any transfer involved in such issuance or shall establish to the satisfaction of SEI that such tax has been paid or is not payable.

(g) (i) Notwithstanding anything to the contrary in this Section 3.7, but subject to Section 3.7(h), an Exchanging Member shall be deemed to have offered to sell its Units and shares of Class B Stock as described in the Exchange Notice to SEI, and SEI may, in its sole discretion, by means of delivery of Call Election Notices and/or Revocation Notices in accordance with, and subject to the terms of, this Section 3.7(g), elect to purchase directly and acquire such Units and shares of Class B Stock on the Exchange Date by paying to the Exchanging Member (or, on the Exchanging Member's written order, its designee) that number of shares of Class A Stock the Exchanging Member (or its designee) would otherwise receive pursuant to Section 3.7(a) or, at SEI's election, an amount of cash equal to the Cash Election Amount of such shares of Class A Stock (the "**Call Right**"), whereupon SEI shall acquire the Units and shares of Class B Stock offered for exchange by the Exchanging Member and shall be treated for all purposes of this Agreement as the owner of such Units and shares of Class B Stock. In the event SEI shall exercise the Call Right, each of the Exchanging Member, the Company and SEI, as the case may be, shall treat the transaction between the Company and the Exchanging Member for federal income tax purposes as a sale of the Exchanging Member's Units and shares of Class B Stock to SEI.

(ii) SEI may at any time in its sole discretion deliver written notice (a "**Call Election Notice**") to each other Member setting forth its election to exercise its Call Right as contemplated by Section 3.7(g) with respect to future Exchanges (without needing to provide further notice of its intention to exercise its Call Right). Subject to the remainder of this Section 3.7(g)(ii), a Call Election Notice will be effective until SEI amends its Call Election Notice with a superseding Call Election Notice or revokes such Call Election Notice by delivery of a written notice of revocation delivered to each other Member or, with respect to a particular Exchange, the Company exercises its Cash Election (a "**Revocation Notice**"). A Call Election Notice may be amended or revoked by SEI at any time; provided that any Exchange Notice delivered by a Member will not, without such Member's written consent, be affected by the subsequent delivery of a Revocation Notice or by an Exchange Notice that is not effective until after the Exchange Date. Following delivery of a Revocation Notice, SEI may deliver a new Call Election Notice pursuant to this Section 3.7(g). Any amendment of a Call Election Notice will not be effective until the Business Day after its delivery to each Member (other than SEI). Each Call Election Notice shall specify the date from which it shall be effective (which shall be no earlier than the Business Day after delivery).

(h) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization or similar transaction with respect to shares of Class A Stock (an "**SEI Offer**") is proposed by SEI or is proposed to

SEI or its stockholders and approved by the board of directors of SEI or is otherwise effected or to be effected with the consent or approval of the board of directors of SEI, the Members (other than SEI) shall be permitted to participate in such SEI Offer by delivery of a contingent Exchange Notice in accordance with the last sentence of Section 3.7(c). In the case of an SEI Offer proposed by SEI, SEI will use its commercially reasonable efforts to take all such actions and do all such things as are necessary or desirable to enable and permit the Members to participate in such SEI Offer to the same extent or on an economically equivalent basis as the holders of shares of Members without discrimination; provided that, without limiting the generality of this sentence, SEI will use its commercially reasonable efforts to ensure that such Members may participate in each such SEI Offer without being required to exchange Units and shares of Class B Stock (or, if so required, to ensure that any such Exchange shall be effective only upon, and shall be conditional upon, the closing of such SEI Offer and only to the extent necessary to tender or deposit to SEI Offer in accordance with the last sentence of Section 3.7(c), or, as applicable, to the extent necessary to exchange the number of Units and shares of Class B Stock being repurchased). For the avoidance of doubt, in no event shall Members (other than SEI) be entitled to receive in such SEI Offer aggregate consideration for each Unit and corresponding share of Class B Stock that is greater than the consideration payable in respect of each share of Class A Stock in connection with an SEI Offer.

(i) No Exchange shall impair the right of the Exchanging Member to receive any distributions payable on the Units so exchanged in respect of a record date that occurs prior to the Exchange Date for such Exchange. For the avoidance of doubt, no Exchanging Member, or a Person designated by an Exchanging Member to receive shares of Class A Stock, shall be entitled to receive, with respect to the same fiscal quarter, distributions or dividends both on Units exchanged by such Exchanging Member and on shares of Class A Stock received by such Exchanging Member, or other Person so designated, if applicable, in such Exchange.

ARTICLE IV

ALLOCATIONS OF PROFITS AND LOSSES

Section 4.1 **Profits and Losses**. After giving effect to the allocations under Section 4.2, Profits and Losses (and, to the extent determined by the Managing Member to be necessary and appropriate to achieve the resulting Capital Account balances described below, any allocable items of income, gain, loss, deduction or credit includable in the computation of Profits and Losses) for each Fiscal Year shall be allocated among the Members during such Fiscal Year in a manner such that, after giving effect to the special allocations set forth in Sections 4.2 and all distributions through the end of such Fiscal Year, the Capital Account balance of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the amount such Member would receive pursuant to Section 10.3(b) if all assets of the Company on hand at the end of such Fiscal Year were sold for cash equal to their Gross Asset Values, all liabilities of the Company were satisfied in cash in accordance with their terms (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), and all remaining or resulting cash was distributed, in accordance with Section 10.3(b), to the Members immediately after making such allocation, minus (ii) such Member's share of Company Minimum Gain and Member Minimum Gain, computed immediately prior to the hypothetical sale of assets.

Section 4.2 **Special Allocations**.

(a) Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in the manner excess nonrecourse liabilities of the Company are allocated pursuant to Section 4.4(c). The amount of Nonrecourse Deductions for a Fiscal Year shall equal the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that Fiscal Year over the aggregate amount of any distributions during that Fiscal Year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined in accordance with the provisions of Treasury Regulations Section 1.704-2(d).

(b) Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i). If more than one Member bears the economic risk of loss for such Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable to such Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the economic risk of loss. This Section 4.2(b) is intended to comply with the provisions of Treasury Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(c) Notwithstanding any other provision of this Agreement to the contrary, if there is a net decrease in Company Minimum Gain during any Fiscal Year (or if there was a net decrease in Company Minimum Gain for a prior Fiscal Year and the Company did not have sufficient amounts of income and gain during prior periods to allocate among the Members under this Section 4.2(c), each Member shall be specially allocated items of Company income and gain for such Fiscal Year in an amount equal to such Member's share of the net decrease in Company Minimum Gain during such year (as determined pursuant to Treasury Regulations Section 1.704-2(g)(2)). This section is intended to constitute a minimum gain chargeback under Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(d) Notwithstanding any other provision of this Agreement except Section 4.2(c), if there is a net decrease in Member Minimum Gain during any Fiscal Year (or if there was a net decrease in Member Minimum Gain for a prior Fiscal Year and the Company did not have sufficient amounts of income and gain during prior periods to allocate among the Members under this Section 4.2(d), each Member shall be specially allocated items of Company income and gain for such year in an amount equal to such Member's share of the net decrease in Member Minimum Gain (as determined pursuant to Treasury Regulations Section 1.704-2(i)(4)). This section is intended to constitute a partner nonrecourse debt minimum gain chargeback under Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) Notwithstanding any provision hereof to the contrary except Section 4.2(c) and Section 4.2(d), in the event any Member unexpectedly receives any adjustment, allocation or distribution described in paragraph (4), (5) or (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d), items of income and gain (consisting of a *pro rata* portion of each item of income, including gross income, and gain for the Fiscal Year) shall be specially allocated to such Member in an amount and manner sufficient to eliminate any Adjusted Capital Account Deficit of that Member as quickly as possible; provided that an allocation pursuant to this Section 4.2(e) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IV have been tentatively made as if this Section 4.2(e) were not in this Agreement. This Section 4.2(e) is intended to constitute a qualified income offset under Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

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

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution to any Member in complete liquidation of such Member's Interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such item of gain or loss shall be allocated to the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) if such section applies or to the Member to whom such distribution was made if Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) For the proper administration of the Company, the Managing Member may (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations of income, gain, loss, deduction, Unrealized Gain or Unrealized Loss; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code. The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 4.4(h) only if such conventions, allocations or amendments would not have a material adverse effect on any holder of Units.

(i) The allocations set forth in Sections 4.2(a) through 4.2(g) (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provision of this Article IV (other than the Regulatory Allocations), the Regulatory Allocations (and anticipated future Regulatory Allocations) shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocation of other items and the Regulatory Allocations to each Member should be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. This Section 4.2(h) is intended to minimize to the extent possible and to the extent necessary any economic distortions which may result from application of the Regulatory Allocations and shall be interpreted in a manner consistent therewith.

Section 4.3 **Allocations for Tax Purposes in General.**

(a) Except as otherwise provided in this Section 4.3, each item of income, gain, loss and deduction of the Company for federal income tax purposes shall be allocated among the Members in the same manner as such item is allocated under Sections 4.1 and 4.2.

(b) In accordance with Code Section 704(c) and the Treasury Regulations thereunder (including the Treasury Regulations applying the principles of Code Section 704(c) to changes in Gross Asset Values), items of income, gain, loss and deduction with respect to any Company property having a Gross Asset Value that differs from such property’s adjusted U.S. federal income tax basis shall, solely for U.S. federal income tax purposes, be allocated among the Members to account for any such difference using the “traditional method with curative allocations,” with the curative allocations applied only to sale gain under Treasury Regulations Section 1.704-3(c) or such other method or methods as determined by the Managing Member to be appropriate and in accordance with the applicable Treasury Regulations.

(c) Any (i) recapture of depreciation or any other item of deduction shall be allocated, in accordance with Treasury Regulations Sections 1.1245-1(e) and 1.1254-5, to the Members who received the benefit of such deductions (taking into account the effect of remedial allocations), and (ii) recapture of grants credits shall be allocated to the Members in accordance with applicable law.

(d) Allocations pursuant to this Section 4.3 are solely for purposes of federal, state and local taxes and shall not affect or in any way be taken into account in computing any Member’s Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

Section 4.4 **Other Allocation Rules.**

(a) The Members are aware of the income tax consequences of the allocations made by this Article IV and the economic impact of the allocations on the amounts receivable by them under this Agreement. The Members hereby agree to be bound by the provisions of this Article IV in reporting their share of Company income and loss for income tax purposes.

(b) All items of income, gain, loss, deduction and credit allocable to an interest in the Company that may have been Transferred shall be allocated between the Transferor and the Transferee based on the portion of the Fiscal Year during which each was recognized as the owner of such interest, without regard to the results of Company operations during any particular portion of that year and without regard to whether cash distributions were made to the Transferor or the Transferee during that year; *provided*, however, that this allocation must be made in accordance with a method permissible under Code Section 706 and the Treasury Regulations thereunder.

(c) The Members’ proportionate shares of the “excess nonrecourse liabilities” of the Company, within the meaning of Treasury Regulations Section 1.752-3(a)(3), shall be allocated to the Members in any manner determined by the Managing Member and permissible under the Treasury Regulations.

ARTICLE V

DISTRIBUTIONS

Section 5.1 Distributions.

(a) *Distributions* . To the extent permitted by applicable Law and hereunder, distributions to Members may be declared by the Managing Member out of funds legally available therefor in such amounts and on such terms (including the payment dates of such distributions) as the Managing Member shall determine using such record date as the Managing Member may designate; such distribution shall be made to the Members as of the close of business on such record date on a *pro rata* basis (except that repurchases or redemptions made in accordance with Section 3.1(f) or payments made in accordance with Section 6.4 need not be on a *pro rata* basis), in accordance with the number of Units owned by each Member as of the close of business on such record date; *provided* , however, that the Managing Member shall have the obligation to make distributions as set forth in Sections 3.1(f), 5.2 and 6.4 ; and provided further that, notwithstanding any other provision herein to the contrary, no distributions shall be made to any Member to the extent such distribution would render the Company insolvent. For purposes of the foregoing sentence, insolvency means the inability of the Company to meet its payment obligations when due. Promptly following the designation of a record date and the declaration of a distribution pursuant to this Section 5.1, the Managing Member shall give notice to each Member of the record date, the amount and the terms of the distribution and the payment date thereof.

(b) *Successors* . For purposes of determining the amount of distributions, each Member shall be treated as having made the Capital Contributions and as having received the Distributions made to or received by its predecessors in respect of any of such Member's Units.

(c) *Distributions In-Kind* . Except as otherwise provided in this Agreement, any distributions may be made in cash or in kind, or partly in cash and partly in kind, as determined by the Managing Member. To the extent that the Company distributes property in-kind to the Members, the Company shall be treated as making a distribution equal to the Fair Market Value of such property for purposes of Section 5.1(a) and such property shall be treated as if it were sold for an amount equal to its Fair Market Value. Any resulting gain or loss shall be allocated to the Member's Capital Accounts in accordance with Section 4.1 and Section 4.2.

Section 5.2 Certain Distributions and Advances . Subject to the availability of funds and to any restrictions contained in any agreement to which the Company is bound,

(a) On each Tax Distribution Date, the Company shall, make distributions to the Members *pro rata* in proportion to their respective Units in an amount sufficient to cause SEI to receive a distribution of cash equal to its Assumed Tax Liability, if any.

(b) On or immediately prior to each Quarterly Distribution Date, the Company shall make distributions to the Members *pro rata* in proportion to their respective Units in an amount determined by the Managing Member in its sole discretion, to be sufficient to cause SEI to receive a distribution of cash equal to the dividend declared by SEI for such Quarterly Distribution Date.

(c) On each TRA Payment Date, the Company shall make distributions to the Members *pro rata* in proportion to their respective Units in an amount sufficient to cause SEI to receive a distribution of cash equal to its required payments under the Tax Receivable Agreement, subject to any deferral required under the Tax Receivable Agreement.

(d) If the cumulative amount of actual federal, state and local income taxes due from SEI for the current taxable year and all prior taxable years as of the due date for SEI's federal income tax return for such taxable year exceeds the sum of the cumulative amount of distributions pursuant to Sections 5.1 and 5.2(a) and any Tax Advances (as defined below) made to SEI through such date, the Company shall, to the extent permitted by applicable Law, but subject to the Act, the availability of funds and any restrictions contained in any agreement to which the Company is bound, make advances to SEI in an amount equal to such excess (a "Tax Advance"). Any such Tax Advance shall be treated as an advance against and, thus, shall reduce (without duplication), any future distributions that would otherwise be made to SEI pursuant to Sections 5.1 and 5.2(a).

Section 5.3 **Distribution Upon Withdrawal**. No withdrawing Member shall be entitled to receive any distribution or the value of such Member's Interest in the Company as a result of withdrawal from the Company prior to the liquidation of the Company, except as specifically provided in this Agreement.

ARTICLE VI MANAGEMENT

Section 6.1 **The Managing Member; Fiduciary Duties**.

(a) SEI shall be the sole Managing Member of the Company. Except as otherwise required by Law, (i) the Managing Member shall have full and complete charge of all affairs of the Company, (ii) the management and control of the Company's business activities and operations shall rest exclusively with the Managing Member, and the Managing Member shall make all decisions regarding the business, activities and operations of the Company (including the incurrence of costs and expenses) in its sole discretion without the consent of any other Member and (iii) the Members other than the Managing Member (in their capacity as such) shall not participate in the control, management, direction or operation of the activities or affairs of the Company and shall have no power to act for or bind the Company.

(b) In connection with the performance of its duties as the Managing Member of the Company, the Managing Member acknowledges that it will owe to the Members the same fiduciary duties as it would owe to the stockholders of a Delaware corporation if it were a member of the board of directors of such a corporation and the Members were stockholders of such corporation. The parties acknowledge that the Managing Member will take action through its board of directors, and that the members of the Managing Member's board of directors will owe comparable fiduciary duties to the stockholders of the Managing Member. The Managing Member will use commercially reasonable efforts, as determined in good faith by the Managing Member, to minimize any conflict of interest between the Members, on the one hand, and the stockholders of the Managing Member, on the other hand, and to effectuate any transaction that involves or affects any of the Company, the Managing Member, the Members and/or the stockholders of the Managing Member in a manner that does not (i) disadvantage the Members or their interests relative to the stockholders of the Managing Member or (ii) advantage the stockholders of the Managing Member relative to the Members or (iii) treats the Members and the stockholders of the Managing Member differently.

Section 6.2 **Officers**.

(a) The Managing Member may appoint, employ or otherwise contract with any Person for the transaction of the business of the Company or the performance of services for or on behalf of the Company, and the Managing Member may delegate to any such Persons such authority to act on behalf of the Company as the Managing Member may from time to time deem appropriate.

(b) Except as otherwise set forth herein, the president and chief executive officer of the Company (the "***President and Chief Executive Officer***") will be responsible for the general and active management of the business of the Company and its Subsidiaries and will see that all orders of the Managing Member are carried into effect. The President and Chief Executive Officer will report to the Managing Member and have the general powers and duties of management usually vested in the office of president and chief executive officer of a corporation organized under the DGCL, subject to the terms of this Agreement, and will have such other powers and duties as may be prescribed by the Managing Member or this Agreement. The President and Chief Executive Officer will have the power to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Company, except where required or permitted by Law to be otherwise signed and executed, and except where the signing and execution thereof will be expressly delegated by the Managing Member to some other Officer or agent of the Company.

(c) Except as set forth herein, the Managing Member may appoint Officers at any time, and the Officers may include one or more vice presidents, a secretary, one or more assistant secretaries, a chief financial officer, a general counsel, a treasurer, one or more assistant treasurers, a chief operating officer, an executive chairman, and any other officers that the Managing Member deems appropriate. Except as set forth herein, the Officers will serve at the pleasure of the Managing Member, subject to all rights, if any, of such Officer under any contract of employment. Any individual may hold any number of offices, and an Officer may, but need not, be a Member of the Company. The Officers will exercise such powers and perform such duties as specified in this Agreement or as determined from time to time by the Managing Member.

(d) Subject to this Agreement and to the rights, if any, of an Officer under a contract of employment, any Officer may be removed, either with or without cause, by the Managing Member. Any Officer may resign at any time by giving written notice to the Managing Member. Any resignation will take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation will not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the Officer is a party. A vacancy in any office because of death, resignation, removal, disqualification or any other cause will be filled in the manner prescribed in this Agreement for regular appointments to that office.

Section 6.3 **Warranted Reliance by Officers on Others**. In exercising their authority and performing their duties under this Agreement, the Officers shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups unless they have actual knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(a) one or more employees or other agents of the Company or subordinates whom the Officer reasonably believes to be reliable and competent in the matters presented; and

(b) any attorney, public accountant, or other person as to matters which the Officer reasonably believes to be within such person's professional or expert competence.

Section 6.4 **Indemnification**. Subject to the limitations and conditions provided in this Section 6.4, each Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or arbitrative (each, a "**Proceeding**"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact the, she or it, or a Person of which he, she or it is the legal representative, is or was a Member or an Officer, in each case, shall be indemnified by the Company to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than such law permitted the Company to provide prior to such amendment) against all judgment, penalties (including excise and similar taxes and punitive damages), fines, settlement and reasonable expenses (including reasonable attorneys' fees and expenses) actually incurred by such person in connection with such Proceeding, appeal, inquiry or investigation, if such Person acted in Good Faith. Reasonable expenses incurred by a Person of the type entitled to be indemnified under this Section 6.4 who was, is or is threatened to be made a named defendant or respondent in a Proceeding shall be paid by the Company in advance of the final disposition of the Proceeding upon receipt of an undertaking by or on behalf of such Person to repay such amount if it shall ultimately be determined that he, she or it is not entitled to be indemnified by the Company. Indemnification under this Section 6.4 shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Section 6.4 shall be deemed contract rights, and no amendment, modification or repeal of this Section 6.4 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings, appeals, inquiries or investigations arising prior to any amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Section 6.4 could involve indemnification for negligence or under theories of strict liability.

Section 6.5 **Maintenance of Insurance or Other Financial Arrangements**. In compliance with applicable Law, the Company (with the approval of the Managing Member) may purchase and maintain insurance or make other financial arrangements on behalf of any Person who is or was a Member, employee or agent of the Company, or at the request of the Company is or was serving as a manager, director, officer, employee or agent of

another limited liability company, corporation, partnership, joint venture, trust or other enterprise, for any Liability asserted against such Person and Liability and expenses incurred by such Person in such Person's capacity as such, or arising out of such Person's status as such, whether or not the Company has the authority to indemnify such Person against such Liability and expenses.

Section 6.6 **Resignation or Termination of Managing Member** . SEI shall not, by any means, resign as, cease to be or be replaced as Managing Member except in compliance with this Section 6.6 . No termination or replacement of SEI as Managing Member shall be effective unless proper provision is made, in compliance with this Agreement, so that the obligations of SEI, its successor (if applicable) and any new Managing Member and the rights of all Members under this Agreement and applicable Law remain in full force and effect. No appointment of a Person other than SEI (or its successor, as applicable) as Managing Member shall be effective unless SEI (or its successor, as applicable) and the new Managing Member (as applicable) provide all other Members with contractual rights, directly enforceable by such other Members against SEI (or its successor, as applicable) and the new Managing Member (as applicable), to cause (a) SEI to comply with all SEI's obligations under this Agreement (including its obligations under Section 3.7) other than those that must necessarily be taken in its capacity as Managing Member and (b) the new Managing Member to comply with all the Managing Member's obligations under this Agreement.

Section 6.7 **No Inconsistent Obligations** . The Managing Member represents that it does not have any contracts, other agreements, duties or obligations that are inconsistent with its duties and obligations (whether or not in its capacity as Managing Member) under this Agreement and covenants that, except as permitted by Section 6.1 , it will not enter into any contracts or other agreements or undertake or acquire any other duties or obligations that are inconsistent with such duties and obligations.

Section 6.8 **Reclassification Events of SEI** . If a Reclassification Event occurs, the Managing Member or its successor, as the case may be, shall, as and to the extent necessary, amend this Agreement in compliance with Section 11.1 , and enter into any necessary supplementary or additional agreements, to ensure that, following the effective date of the Reclassification Event: (i) the exchange rights of holders of Units set forth in Section 3.7 provide that each Unit and share of Class B Stock is exchangeable for the same amount and same type of property, securities or cash (or combination thereof) that one share of Class A Stock becomes exchangeable for or converted into as a result of the Reclassification Event and (ii) SEI or the successor to SEI, as applicable, is obligated to deliver such property, securities or cash upon such exchange. SEI shall not consummate or agree to consummate any Reclassification Event unless the successor Person, if any, becomes obligated to comply with the obligations of SEI (in whatever capacity) under this Agreement.

Section 6.9 **Certain Costs and Expenses** . The Company shall (i) pay, or cause to be paid, all costs, fees, operating expenses and other expenses of the Company (including the costs, fees and expenses of attorneys, accountants or other professionals and the compensation of all personnel providing services to the Company) incurred in pursuing and conducting, or otherwise related to, the activities of the Company, and (ii) in the sole discretion of the Managing Member, bear and/or reimburse the Managing Member for any costs, fees or expenses incurred by it in connection with serving as the Managing Member. To the extent that the Managing Member determines in its sole discretion that such expenses are related to the business and affairs of the Managing Member that are conducted through the Company and/or its Subsidiaries (including expenses that relate to the business and affairs of the Company and/or its Subsidiaries and that also relate to other activities of the Managing Member), the Managing Member may cause the Company to pay or bear all expenses of the Managing Member, including, without limitation, costs of securities offerings not borne directly by members, board of directors compensation and meeting costs, cost of periodic reports to its stockholders, litigation costs and damages arising from litigation, accounting and legal costs and franchise taxes and any other general and administrative expenses incurred as a result of the Managing Member being a publicly traded company, provided that the Company shall not pay or bear any income tax obligations of the Managing Member.

Section 6.10 **Waiver of Business Opportunities** .

(a) To the fullest extent permitted by applicable law, the Company, on behalf of itself and its subsidiaries, and each of the Members, renounces any interest or expectancy in, or in being offered an opportunity to participate in, any business opportunities that are from time to time presented to NuDevco Partners, LLC, NuDevco

Partners Holdings, LLC and W. Keith Maxwell III (collectively, the “Sponsors”) or any of their respective affiliates or any of their respective agents, shareholders, members, partners, directors, officers, employees, affiliates or subsidiaries (other than the Company, SEI and their respective subsidiaries), including any director or officer of the Company who is also an agent, shareholder, member, partner, director, officer, employee, affiliate or subsidiary of any Sponsor (each, a “Business Opportunities Exempt Party”), even if the business opportunity is one that the Company or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and no Business Opportunities Exempt Party shall have any duty to communicate or offer any such business opportunity to the Company or any other Member or be liable to the Company, any other Member or their respective subsidiaries or any Member, including for breach of any fiduciary or other duty, and the Company shall indemnify each Business Opportunities Exempt Party against any claim that such person is liable to the Company or the Members for breach of any fiduciary duty, by reason of the fact that such person (i) participates in, pursues or acquires any such business opportunity, (ii) directs any such business opportunity to another person or (iii) fails to present any such business opportunity, or information regarding any such business opportunity, to the Company, any other Member or their respective subsidiaries, unless, in the case of a person who is a director or officer of the Company, such business opportunity is expressly offered to such director or officer in writing solely in his capacity as a director or officer of the Company.

(b) Neither the amendment nor repeal of this Section 6.10, nor the amendment of the Certificate of Formation of the Company, nor, to the fullest extent permitted by applicable Law, any modification of Law, shall eliminate, reduce or otherwise adversely affect any right or protection of any Person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

(c) If any provision or provisions of this Section 6.10 shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Section 6.10 (including, without limitation, each portion of any paragraph of this Section 6.10 containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Section 6.10 (including, without limitation, each such portion of any paragraph of this Section 6.10 containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Company to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by applicable Law.

ARTICLE VII

ROLE OF MEMBERS

Section 7.1 **Rights or Powers**. Other than the Managing Member, the Members, acting in their capacity as Members, shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act. A Member, any Affiliate thereof or an employee, stockholder, agent, director or officer of a Member or any Affiliate thereof, may also be an employee or be retained as an agent of the Company. The existence of these relationships and acting in such capacities will not result in the Member (other than the Managing Member) being deemed to be participating in the control of the business of the Company or otherwise affect the limited liability of the Member. Except as specifically provided herein, a Member (other than the Managing Member) shall not, in its capacity as a Member, take part in the operation, management or control of the Company’s business, transact any business in the Company’s name or have the power to sign documents for or otherwise bind the Company.

Section 7.2 **Voting**.

(a) Meetings of the Members may be called upon the written request of Members holding at least 50% of the outstanding Units. Such request shall state the location of the meeting and the nature of the business to

be transacted at the meeting. Written notice of any such meeting shall be given to all Members not less than two Business Days nor more than 30 days prior to the date of such meeting. Members may vote in person, by proxy or by telephone at any meeting of the Members and may waive advance notice of such meeting. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in this Section 7.2. Except as otherwise expressly provided in this Agreement, the affirmative vote of the Members holding a majority of the outstanding Units shall constitute the act of the Members.

(b) Each Member may authorize any Person or Persons to act for it by proxy on all matters in which such Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by such Member or its attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

(c) Each meeting of Members shall be conducted by an Officer designated by the Managing Member or such other individual person as the Managing Member deems appropriate.

(d) Any action required or permitted to be taken by the Members may be taken without a meeting if the requisite Members whose approval is necessary consent thereto in writing.

Section 7.3 Various Capacities. The Members acknowledge and agree that the Members or their Affiliates will from time to time act in various capacities, including as a Member and as the Tax Matters Member.

ARTICLE VIII

TRANSFERS OF INTERESTS

Section 8.1 Restrictions on Transfer.

(a) Except as provided in Section 3.7 and except for the Transfers by a Member to Permitted Transferee, no Member shall Transfer all or any portion of its Interest without the prior written consent of the Managing Member in its sole discretion. If, notwithstanding the provisions of this Section 8.1(a), all or any portion of a Member's Interests are Transferred in violation of this Section 8.1(a), involuntarily, by operation of law or otherwise, then without limiting any other rights and remedies available to the other parties under this Agreement or otherwise, the Transferee of such Interest (or portion thereof) shall not be admitted to the Company as a Member or be entitled to any rights as a Member hereunder, and the Transferor will continue to be bound by all obligations hereunder, unless and until the Managing Member consents in writing to such admission, which consent shall be granted or withheld in the Managing Member's sole discretion. Any attempted or purported Transfer of all or a portion of a Member's Interests in violation of this Section 8.1(a) shall be null and void and of no force or effect whatsoever. No Units may be Transferred by a Member that also holds Class B Stock unless a corresponding number of shares of Class B Stock are transferred therewith. For the avoidance of doubt, the restrictions on Transfer contained in this Article VIII shall not apply to the Transfer of any capital stock of the Managing Member; provided that no shares of Class B Stock may be Transferred unless a corresponding number of Units are Transferred therewith in accordance with this Agreement.

(b) In addition to any other restrictions on Transfer herein contained, including the provisions of this Article VIII, in no event may any Transfer or assignment of Interests by any Member be made (i) to any Person who lacks the legal right, power or capacity to own Interests; (ii) if in the opinion of legal counsel or a qualified tax advisor to the Company such Transfer presents a material risk that such Transfer would cause the Company to cease to be classified as a partnership or to be classified as a "publicly traded partnership" within the meaning of Section 7704 (b) of the Code for federal income tax purposes; (iii) if such Transfer would cause the Company to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in Section 3(14) of ERISA) or a "disqualified person" (as defined in Section 4975(e)(2) of the Code); (iv) if such Transfer would, in the opinion of counsel to the Company, cause any portion of the assets of the Company to constitute assets of any employee benefit plan pursuant to the Plan Asset Regulation or otherwise cause the Company to be subject to regulation under ERISA; (v) if such Transfer requires the registration of such Interests or any Equity Securities

issued upon any exchange of such Interests, pursuant to any applicable federal or state securities Laws; (vi) if such Transfer subjects the Company to regulation under the Investment Company Act or the Investment Advisors Act of 1940, each as amended (or any succeeding law); or (vii) by the Managing Member, if such Transfer would result in the Managing Member holding less than 2% of the outstanding Units.

Section 8.2 **Notice of Transfer**. Other than in connection with Transfers made pursuant to Section 3.7, each Member shall, after complying with the provisions of this Agreement, but in any event no later than three Business Days following any Transfer of Interests, give written notice to the Company of such Transfer. Each such notice shall describe the manner and circumstances of the Transfer.

Section 8.3 **Transferee Members**. A Transferee of Interests pursuant to this Article VIII shall have the right to become a Member only if (i) the requirements of this Article VIII are met, (ii) such Transferee executes an instrument reasonably satisfactory to the Managing Member agreeing to be bound by the terms and provisions of this Agreement and assuming all of the Transferor's then existing and future Liabilities arising under or relating to this Agreement, (iii) such Transferee represents that the Transfer was made in accordance with all applicable securities Laws, (iv) the Transferor or Transferee shall have reimbursed the Company for all reasonable expenses (including attorneys' fees and expenses) of any Transfer or proposed Transfer of a Member's Interest, whether or not consummated and (v) if such Transferee or his or her spouse is a resident of a community property jurisdiction, then such Transferee's spouse shall also execute an instrument reasonably satisfactory to the Managing Member agreeing to be bound by the terms and provisions of this Agreement to the extent of his or her community property or quasi-community property interest, if any, in such Member's Interest. Unless agreed to in writing by the Managing Member, the admission of a Member shall not result in the release of the Transferor from any Liability that the Transferor may have to each remaining Member or to the Company under this Agreement or any other Contract between the Managing Member, the Company or any of its Subsidiaries, on the one hand, and such Transferor or any of its Affiliates, on the other hand. Written notice of the admission of a Member shall be sent promptly by the Company to each remaining Member. Notwithstanding anything to the contrary in this Section 8.3, and except as otherwise provided in this Agreement, following a Transfer by one or more Members (or a transferee of the type described in this sentence) to an Permitted Transferee of all or substantially all of their Interests, such transferee shall succeed to all of the rights of such Member(s) under this Agreement.

Section 8.4 **Legend**. Each certificate representing a Unit, if any, will be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933.

THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SUCH ACT.

THE TRANSFER AND VOTING OF THESE SECURITIES IS SUBJECT TO THE CONDITIONS SPECIFIED IN THE SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF SPARK HOLDCO, LLC DATED AS OF AUGUST 1, 2014, AMONG THE MEMBERS LISTED THEREIN, AS IT MAY BE AMENDED, SUPPLEMENTED AND/OR RESTATED FROM TIME TO TIME, AND NO TRANSFER OF THESE SECURITIES WILL BE VALID OR EFFECTIVE UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE ISSUER OF SUCH SECURITIES."

ARTICLE IX

ACCOUNTING

Section 9.1 **Books of Account**. The Company shall maintain true books and records of account in which full and correct entries shall be made of all its business transactions pursuant to a system of accounting established and administered in accordance with GAAP, and shall set aside on its books all such proper accruals and reserves as shall be required under GAAP.

Section 9.2 **Tax Elections**. The Company shall make the following elections on the appropriate forms or tax returns:

- (a) to adopt the calendar year as the Company's Fiscal Year, if permitted under the Code;
- (b) to adopt the accrual method of accounting for U.S. federal income tax purposes;
- (c) to elect to amortize the organizational expenses of the Company as permitted by Code Section 709(b);
- (d) to make an election described in Section 754 of the Code (which the Company shall ensure that it has in effect at all times); and
- (e) any other election the Managing Member may deem appropriate and in the best interests of the Company.

Section 9.3 **Tax Returns; Information**. The Tax Matters Member shall arrange for the preparation and timely filing of all income and other tax and informational returns of the Company. The Tax Matters Member shall furnish to each Member a copy of each approved return and statement, together with any schedules or other information which each Member may require in connection with such Member's own tax affairs as soon as practicable (but in no event more than 60 days after the end of each Fiscal Year).

Section 9.4 **Tax Matters Member**. The Managing Member is specially authorized and appointed to act as the "***Tax Matters Member***" under the Code and in any similar capacity under state or local Law. The Tax Matters Member may retain, at the Company's expense, such outside counsel, accountants and other professional consultants as it may reasonably deem necessary in the course of fulfilling its obligations as Tax Matters Member.

Section 9.5 **Withholding Tax Payments and Obligations**. If withholding taxes are paid or required to be paid in respect of payments made to or by the Company, such payments or obligations shall be treated as follows:

(a) If the Company receives proceeds in respect of which a tax has been withheld, the Company shall be treated as having received cash in an amount equal to the amount of such withheld tax, and, for all purposes of this Agreement but subject to Section 9.5(d), each Member shall be treated as having received a distribution pursuant to Section 5.1 equal to the portion of the withholding tax allocable to such Member, as determined by the Managing Member in its discretion.

(b) The Company is authorized to withhold from any payment made to, or any distributive share of, a Member any taxes required by Law to be withheld.

(c) Neither the Company nor the Managing Member shall be liable for any excess taxes withheld in respect of any Member, and, in the event of overwithholding, a Member's sole recourse shall be to apply for a refund from the appropriate Governmental Entity.

(d) Any taxes withheld pursuant to Section 9.5(a) or (b) shall be treated as if distributed to the relevant Member to the extent an amount equal to such withheld taxes would then be distributable to such Member, and, to the extent in excess of such distributable amounts, as a demand loan payable by the Member to the Company with interest at the Prime Rate in effect from time to time, compounded annually. The Managing Member may, in its discretion, either demand payment of the principal and accrued interest on such demand loan at any time, and enforce payment thereof by legal process, or may withhold from one or more distributions to a Member amounts sufficient to satisfy such Member's obligations under any such demand loan.

(e) If the Company is required by Law to make any payment to a Governmental Entity that is specifically attributable to a Member or a Member's status as such (including federal withholding taxes, state personal property taxes, and state unincorporated business taxes), then such Member shall indemnify and contribute

to the Company in full for the entire amount of taxes paid (plus interest, penalties and related expenses if the failure of the Company to make such payment is due to the fault of the Member) (which payment shall not be deemed a Capital Contribution for purposes of this Agreement). The Managing Member may offset distributions to which a Person is otherwise entitled under this Agreement against such Person's obligation to indemnify the Company under this Section 9.5(e).

ARTICLE X

DISSOLUTION AND TERMINATION

Section 10.1 Liquidating Events. The Company shall dissolve and commence winding up and liquidating upon the first to occur of the following ("Liquidating Events"):

- (a) The sale of all or substantially all of the assets of the Company; and
- (b) The determination of the Managing Member to dissolve, wind up, and liquidate the Company.

The Members hereby agree that the Company shall not dissolve prior to the occurrence of a Liquidating Event and that no Member shall seek a dissolution of the Company, under Section 18-802 of the Act or otherwise, other than based on the matters set forth in subsections (a) and (b) above. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating Event, the Members hereby agree to continue the business of the Company without a winding up or liquidation. In the event of a dissolution pursuant to Section 10.1(b), the relative economic rights of each class of Units immediately prior to such dissolution shall be preserved to the greatest extent practicable with respect to distributions made to Members pursuant to Section 10.3 in connection with such dissolution, taking into consideration tax and other legal constraints that may adversely affect one or more parties to such dissolution and subject to compliance with applicable laws and regulations, unless, with respect to any class of Units, holders of a majority of the Units of such class consent in writing to a treatment other than as described above.

Section 10.2 Bankruptcy. For purposes of this Agreement, the "bankruptcy" of a Member shall mean the occurrence of any of the following: (a) any Governmental Entity shall take possession of any substantial part of the property of that Member or shall assume control over the affairs or operations thereof, or a receiver or trustee shall be appointed, or a writ, order, attachment or garnishment shall be issued with respect to any substantial part thereof, and such possession, assumption of control, appointment, writ or order shall continue for a period of 90 consecutive days; or (b) a Member shall admit in writing of its inability to pay its debts when due, or make an assignment for the benefit of creditors; or apply for or consent to the appointment of any receiver, trustee or similar officer or for all or any substantial part of its property; or shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debts, dissolution, liquidation, or similar proceeding under the Laws of any jurisdiction; or (c) a receiver, trustee or similar officer shall be appointed for such Member or with respect to all or any substantial part of its property without the application or consent of that Member, and such appointment shall continue undischarged or unstayed for a period of 90 consecutive days or any bankruptcy, insolvency, reorganization, arrangements, readjustment of debt, dissolution, liquidation or similar proceedings shall be instituted (by petition, application or otherwise) against that Member and shall remain undischarged for a period of 90 consecutive days.

Section 10.3 Procedure.

(a) In the event of the dissolution of the Company for any reason, the Members shall commence to wind up the affairs of the Company and to liquidate the Company's investments; provided that if a Member is in bankruptcy or dissolved, another Member, who shall be the Managing Member ("Winding-Up Member") shall commence to wind up the affairs of the Company and, subject to Section 10.4(a), such Winding-Up Member shall have full right and unlimited discretion to determine in good faith the time, manner and terms of any sale or sales of the Property or other assets pursuant to such liquidation, having due regard to the activity and condition of the relevant market and general financial and economic conditions. The Members shall continue to share profits, losses and distributions during the period of liquidation in the same manner and proportion as though the Company had not dissolved. The Company shall engage in no further business except as may be necessary, in the reasonable discretion of the Managing Member or the Winding-Up Member, as applicable, to preserve the value of the Company's assets during the period of dissolution and liquidation.

(b) Following the payment of all expenses of liquidation and the allocation of all Profits and Losses as provided in Article IV, the proceeds of the liquidation and any other funds of the Company shall be distributed in the following order of priority:

(i) First, to the payment and discharge of all of the Company's debts and Liabilities to creditors (whether third parties or Members), in the order of priority as provided by Law, except any obligations to the Members in respect of their Capital Accounts;

(ii) Second, to set up such cash reserves which the Managing Member reasonably deems necessary for contingent or unforeseen Liabilities or future payments described in Section 10.3(b)(i) (which reserves when they become unnecessary shall be distributed in accordance with the provisions of subsection (iv), below); and

(iii) Third, subject to Section 5.2(b), the balance to the Members, *pro rata* in proportion to their respective Units.

(c) Except as provided in Section 10.4(a), no Member shall have any right to demand or receive property other than cash upon dissolution and termination of the Company.

(d) Upon the completion of the liquidation of the Company and the distribution of all Company funds, the Company shall terminate and the Managing Member or the Winding-Up Member, as the case may be, shall have the authority to execute and record a certificate of cancellation of the Company, as well as any and all other documents required to effectuate the dissolution and termination of the Company.

Section 10.4 **Rights of Members**.

(a) Each Member irrevocably waives any right that it may have to maintain an action for partition with respect to the property of the Company.

(b) Except as otherwise provided in this Agreement, (i) each Member shall look solely to the assets of the Company for the return of its Capital Contributions, and (ii) no Member shall have priority over any other Member as to the return of its Capital Contributions, distributions or allocations.

Section 10.5 **Notices of Dissolution**. In the event a Liquidating Event occurs or an event occurs that would, but for provisions of Section 10.1, result in a dissolution of the Company, the Company shall, within 30 days thereafter, (a) provide written notice thereof to each of the Members and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the Managing Member), and (b) comply, in a timely manner, with all filing and notice requirements under the Act or any other applicable Law.

Section 10.6 **Reasonable Time for Winding Up**. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets in order to minimize any losses that might otherwise result from such winding up.

Section 10.7 **No Deficit Restoration**. No Member shall be personally liable for a deficit Capital Account balance of that Member, it being expressly understood that the distribution of liquidation proceeds shall be made solely from existing Company assets.

ARTICLE XI

GENERAL

Section 11.1 **Amendments; Waivers**.

(a) The terms and provisions of this Agreement may be waived, modified or amended (including by means of merger, consolidation or other business combination to which the Company is a party) only with the approval of the Managing Member; *provided, however*, that no amendment to this Agreement may:

(i) modify the limited liability of any Member, or increase the liabilities or obligations of any Member, in each case, without the consent of each such affected Member; or

(ii) materially alter or change any rights, preferences or privileges of any Interests in a manner that is different or prejudicial relative to any other Interests, without the approval of a majority in interest of the Members holding the Interests affected in such a different or prejudicial manner.

(b) Notwithstanding the foregoing subsection (a), the Managing Member, acting alone, may amend this Agreement, including Exhibit A, to reflect the admission of new Members, Transfers of Interests, the issuance of additional Units or Equity Securities, as provided by the terms of this Agreement, and, subject to Section 11.1(a), subdivisions or combinations of Units made in compliance with Section 3.1(g).

(c) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

Section 11.2 **Further Assurances**. Each party agrees that it will from time to time, upon the reasonable request of another party, execute such documents and instruments and take such further action as may be required to accomplish the purposes of this Agreement.

Section 11.3 **Successors and Assigns**. All of the terms and provisions of this Agreement shall be binding upon the parties and their respective successors and assigns, but shall inure to the benefit of and be enforceable by the successors and assigns of any Member only to the extent that they are permitted successors and assigns pursuant to the terms hereof. No party may assign its rights hereunder except as herein expressly permitted.

Section 11.4 **Entire Agreement**. This Agreement, together with all Exhibits and Schedules hereto and all other agreements referenced therein and herein, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein and therein.

Section 11.5 **Rights of Members Independent**. The rights available to the Members under this Agreement and at Law shall be deemed to be several and not dependent on each other and each such right accordingly shall be construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a Member and/or the Company from time to time and no such exercise shall exhaust the rights or preclude another Member from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

Section 11.6 **Governing Law**. This Agreement, the legal relations between the parties and any Action, whether contractual or non-contractual, instituted by any party with respect to matters arising under or growing out of or in connection with or in respect of this Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware applicable to contracts made and performed in such State and without regard to conflicts of law doctrines, except to the extent that certain matters are preempted by federal Law *or are governed as a matter of controlling Law by the Law of the jurisdiction of organization of the respective parties*.

Section 11.7 **Jurisdiction and Venue**. The parties hereto hereby agree and consent to be subject to the jurisdiction of any federal court of the District of Delaware or the Delaware Court of Chancery over any action, suit or proceeding (a "Legal Action") arising out of or in connection with this Agreement. The parties hereto irrevocably waive the defense of an inconvenient forum to the maintenance of any such Legal Action. Each of the parties hereto further irrevocably consents to the service of process out of any of the aforementioned courts in any such Legal Action by the mailing of copies thereof by registered mail, postage prepaid, to such party at its address set forth in this Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail. Nothing in this Section 11.7 shall affect the right of any party hereto to serve legal process in any other manner permitted by law.

Section 11.8 **Headings**. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 11.9 **Counterparts**. This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other document) and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other party.

Section 11.10 **Notices**. Any notice or other communication hereunder must be given in writing and (a) delivered in person, (b) transmitted by facsimile or telecommunications mechanism, provided, that any notice so given is also mailed as provided in clause (c), or (c) mailed by certified or registered mail, postage prepaid, receipt requested as follows:

If to the Company or the Managing Member, addressed to it at:

c/o Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Telephone: 713.600.2600
Facsimile: 832.320.2943
Attention: Gil Melman, General Counsel

With copies (which shall not constitute notice) to:

Vinson & Elkins L.L.P.
1001 Fannin, Suite 2500-6760
Houston, Texas 77002
Telephone: 713.758.2977
Facsimile: 713.615.5234
Attention: Sarah K. Morgan

or to such other address or to such other person as either party shall have last designated by such notice to the other parties. Each such notice or other communication shall be effective (i) if given by telecommunication, when transmitted to the applicable number so specified in (or pursuant to) this Section 11.10 and an appropriate answerback is received or, if transmitted after 4:00 p.m. local time on a Business Day in the jurisdiction to which such notice is sent or at any time on a day that is not a Business Day in the jurisdiction to which such notice is sent, then on the immediately following Business Day, (ii) if given by mail, on the first Business Day in the jurisdiction to which such notice is sent following the date three days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, on the Business Day when actually received at such address or, if not received on a Business Day, on the Business Day immediately following such actual receipt.

Section 11.11 **Representation By Counsel; Interpretation**. The parties acknowledge that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of Law, or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived.

Section 11.12 **Severability**. If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any Governmental Entity, the remaining provisions of this Agreement, to the extent permitted by Law shall remain in full force and effect, provided, that the essential terms and conditions of this Agreement for all parties remain valid, binding and enforceable.

Section 11.13 **Expenses**. Except as otherwise provided in this Agreement, each party shall bear its own expenses in connection with the transactions contemplated by this Agreement.

Section 11.14 **No Third Party Beneficiaries**. Except as expressly provided in Section 6.4 and Section 9.2, nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under this Agreement or otherwise create any third party beneficiary hereto.

[Signatures on Next Page]

IN WITNESS WHEREOF, each of the parties hereto has caused this Second Amended and Restated Limited Liability Company Agreement to be executed by its duly authorized officers as of the day and year first above written.

COMPANY :
SPARK HOLDCO, LLC

By: _____
Name: Nathan Kroeker
Title: President and Chief Executive Officer

MANAGING MEMBER :

SPARK ENERGY, INC.

By: _____
Name: Nathan Kroeker
Title: President and Chief Executive Officer

By: _____
Name:
Title:

NUDEVCO RETAIL, LLC

By: _____
Name:
Title:

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EXHIBIT A**MEMBERS, IPO DATE CAPITAL ACCOUNT BALANCE AND INTERESTS**

Members	IPO Date Capital Account		Percentage of Class
	Balance	Units	of Units
Spark Energy, Inc.	\$ 54,000,000	3,000,000	21.82%
NuDevco Retail Holdings, LLC	\$ 191,025,000	10,612,500	77.18%
NuDevco Retail, LLC	\$ 2,475,000	137,500	1.0%

ANNEX D

REGISTRATION RIGHTS AGREEMENT

(see attached)

A-1

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this “*Agreement*”) is made and entered into as of August 1, 2014, by and among Spark Energy, Inc., a Delaware corporation (the “*Company*”), NuDevco Retail, LLC, a Delaware limited liability company (“*NuDevco Retail*”) and NuDevco Retail Holdings, LLC, a Delaware limited liability company (“*NuDevco Retail Holdings*”) (each a “*Party*” and collectively, the “*Parties*”).

WITNESSETH:

WHEREAS, in connection with, and in consideration of, the transactions contemplated by the Company’s Registration Statement on Form S-1, (File No. 333-196375) initially filed with the Commission (as hereinafter defined) on May 29, 2014 and declared effective by the Commission under the Securities Act (as hereinafter defined) on July 28, 2014, the Holders (as hereinafter defined) have requested, and the Company has agreed to provide, registration rights with respect to the Registrable Securities (as hereinafter defined), as set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

Section 1. Definitions

Unless otherwise defined herein, as used in this Agreement, the following terms have the following meanings:

“*Agreement*” has the meaning set forth in the preamble.

“*Automatic Shelf Registration Statement*” means a registration statement filed on Form S-3 (or successor form or other appropriate form under the Securities Act) by a WKSJ pursuant to General Instruction I.D. or I.C. (or other successor or appropriate instruction) of such forms, respectively.

“*Business Day*” means any day other than a Saturday, Sunday or legal holiday on which banks in New York, New York are authorized or obligated by law to close.

“*Capital Stock*” means the Class A Common Stock and the Class B Common Stock.

“*Class A Common Stock*” means the Company’s Class A common stock, par value \$0.01 per share.

“*Class B Common Stock*” means the Company’s Class B common stock, par value \$0.01 per share.

“*Commission*” means the Securities and Exchange Commission.

“*Company*” has the meaning set forth in the preamble.

“ **Entity** ” means any corporation, limited liability company, general partnership, limited partnership, venture, trust, business trust, unincorporated association, estate or other entity.

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

“ **Governmental Authority** ” means any United States, foreign, supra-national, federal, state, provincial, local or self-regulatory governmental, regulatory or administrative authority, agency, division, body, organization or commission or any judicial or arbitral body.

“ **Holder** ” means any Party owning Registrable Securities.

“ **Initiating Holder(s)** ” has the meaning set forth in Section 2(a).

“ **NuDevco Retail** ” has the meaning set forth in the preamble.

“ **NuDevco Retail Holdings** ” has the meaning set forth in the preamble.

“ **Party** ” has the meaning set forth in the preamble.

“ **Person** ” means any individual or Entity.

“ **Prospectus** ” has the meaning set forth in Section 5(a).

“ **Registering Stockholder** ” means any Holder of Registrable Securities giving the Company a notice pursuant to Section 2 or Section 3 hereof requesting that the Registrable Securities owned by it be included in a proposed registration.

“ **Registrable Securities** ” means any shares of Class A Common Stock held by the Holders from time to time, including any shares of Class A Common Stock issuable upon exchange of Units, together with the same number of shares of Class B Common Stock, other than shares of Class A Common Stock (a) sold by a Holder in a transaction in which the Holder’s rights under this Agreement are not assigned, (b) sold pursuant to an effective registration statement under the Securities Act, (c) sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act (including transactions under Rule 144, or a successor thereto, promulgated under the Securities Act) so that all transfer restrictions and restrictive legends with respect thereto, if any, are removed upon the consummation of such sale, or (d) that can be publicly sold by the Holder in question without limitations on the manner of such sale and without volume limitations pursuant to Rule 144, or a successor thereto.

“ **Registration Expenses** ” means, except for Selling Expenses (as hereinafter defined), all expenses incurred by the Company in effecting any registration pursuant to this Agreement, including all registration, qualification and filing fees, printing expenses, escrow fees, reasonable fees and disbursements of counsel for the Company, blue sky fees and expenses, the expense of any special audits incident to or required by any such registration and the reasonable fees and disbursements of one special legal counsel to represent all of the Holders together.

“ **Registration Statement** ” has the meaning set forth in Section 5(a).

“ **Rule 144** ” has the meaning set forth in Section 8.

“ **Securities Act** ” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“ **Selling Expenses** ” means all underwriting discounts and selling commissions applicable to the securities sold in a transaction or transactions registered on behalf of the Holders.

“ **Shelf Registration Statement** ” shall mean a registration statement of the Company filed with the Commission on Form S-3 (or any successor form or other appropriate form under the Securities Act) for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the Commission) covering the Registrable Securities, as applicable.

“ **Spark HoldCo LLC Agreement** ” means the Second Amended and Restated Limited Liability Company Agreement of Spark HoldCo, LLC, a Delaware limited liability company, dated as of August 1, 2014.

“ **Transfer** ” means a disposition, sale, assignment, transfer, exchange, pledge or the grant of a security interest or other encumbrance.

“ **Underwritten Offering** ” has the meaning set forth in Section 2(a).

“ **Units** ” has the meaning given to such term in the Spark HoldCo LLC Agreement.

“ **Violation** ” has the meaning set forth in Section 7(a).

“ **WKSI** ,” or a well-known seasoned issuer, has the meaning set forth in Rule 405 under the Securities Act.

Section 2. *Demand Registration Rights*

(a) *General* . If the Company shall receive from any Holder or group of Holders, at any time after the 180th day after the date of the closing of the Company’s initial public offering, a written request that the Company file a registration statement with respect to any of such Holder’s Registrable Securities or, in the event that a Shelf Registration Statement covering such Holders’ Registrable Securities is already effective, a written request that the Company engage in an underwritten offering (an “ **Underwritten Offering** ”) in respect of such Holder’s Registrable Securities (the sender(s) of such request or any similar request pursuant to this Agreement shall be known as the “ **Initiating Holder (s)** ”), then the Company shall, within thirty (30) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 2, use its commercially reasonable efforts to effect, as soon as reasonably practicable, the registration under the Securities Act of the sale of all Registrable Securities that the Holders request to be registered and/or the Underwritten Offering of all Registrable Securities that the Holders request to be offered pursuant to such Underwritten Offering. Notwithstanding the foregoing, if the Initiating Holders’ Registrable Securities that are desired to be sold in an Underwritten Offering are subject to an effective Shelf Registration Statement, neither the Company nor the Initiating Holders shall be required to include in such Underwritten

Offering other Registrable Securities that are not subject to an effective Shelf Registration Statement to the extent that such inclusion would result in a material delay in the consummation of the Underwritten Offering. Notwithstanding anything to the contrary in this Agreement, the Initiating Holders may request that the Company register the sale of such Registrable Securities on an appropriate form, including a Shelf Registration Statement (so long as the Company is eligible to use Form S-3) and, if the Company is a WKSI, an Automatic Shelf Registration Statement. The Company shall not be obligated to take any action to effect an Underwritten Offering unless such Holder or Holders reasonably anticipates that the Underwritten Offering will result in gross proceeds of at least \$30,000,000 in the aggregate.

(b) *Underwriting*. In connection with any Underwritten Offering, the Company shall retain underwriters that are reasonably acceptable to such Holder or Holders in order to permit the Holder or Holders to effect such disposition through an Underwritten Offering; provided, however, that the Company shall have the exclusive right to select the bookrunning managers. The Company and the Holder or Holders shall enter into an underwriting agreement in customary form with the underwriter that is acceptable to the Company and take all reasonable actions as are requested by the managing underwriters to facilitate the Underwritten Offering and sale of the Registrable Securities therein. Notwithstanding any other provision of this Section 2, if the underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, the Initiating Holders shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated as set forth in this Section 2(b). The shares of Registrable Securities that may be included shall be allocated first to the shares requested to be included by the Initiating Holders and then the shares requested to be included by other Holders, with such shares allocated among such other Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such other Holders at the time of filing the registration statement.

If any Holder of Registrable Securities disapproves of the terms of the underwriting, such Person may elect to withdraw therefrom by written notice to the Company, the managing underwriter and the Initiating Holders. If by the withdrawal of such Registrable Securities a greater number of shares of Registrable Securities held by other Holders may be included in such registration (up to the maximum of any limitation imposed by the underwriters), then the Company shall offer to all Holders who have included Registrable Securities in the registration the right to include additional Registrable Securities in the same proportion used in determining the underwriter limitation in this Section 2(b). If the underwriter has not limited the number of shares of Registrable Securities to be underwritten, the Company may include securities for its own account if the underwriter so agrees and if the number of shares of Registrable Securities which would otherwise have been included in such registration and underwriting will not thereby be limited.

Section 3. *Piggyback Registrations*

(a) *General*. If, at any time or from time to time after the 180th day after the date of the closing of the Company's initial public offering, the Company proposes to register the sale of any of its Class A Common Stock for own account or for the account of any third person in connection with an Underwritten Offering of its Class A Common Stock to the general public for cash on a form which would permit the registration of Registrable Securities, the Company will:

- (i) provide to each Holder written notice thereof at least five (5) Business Days before the proposed filing date; and

(ii) use its commercially reasonable efforts to include in such registration and in the underwriting involved therein, all the Registrable Securities specified in a written request or requests, made within two (2) Business Days after such Holder's receipt of such written notice from the Company, by any Holders (except that (A) if the underwriter determines that marketing factors require a shorter time period and so inform each Holder in the applicable written notice, such written request or requests must be made within five (5) days and (B) in the case of an "overnight" offering or a "bought deal," such written request or requests must be made within one (1) Business Day), except as set forth in Section 3(b); provided, however, that the Company may withdraw any Registration Statement described in this Section 3 at any time before it becomes effective, or postpone or terminate the offering of securities under such registration statement, without obligation or liability to any Holder.

(b) *Underwriting*. The right of any Holder to registration pursuant to this Section 3 shall be conditioned upon such Holder's participation in the underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable Securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. Notwithstanding any other provision of this Section 3, if the underwriter determines that marketing factors require a limitation of the number of shares to be underwritten, the Company shall so advise all Holders whose securities would otherwise be registered and underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be so limited and shall be allocated first, to the Company; second, if there remains additional availability for additional Class A Common Stock to be included in such offering, among all Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities entitled to inclusion in such registration held by such Holders at the time of filing the registration statement, and third, if there remains availability for additional securities to be included in such offering, pro rata among any other persons who have been granted registration rights, or who have requested participation in the offering.

If any Holder disapproves of the terms of any such underwriting, the Holder may elect to withdraw therefrom by written notice to the Company and the underwriter. If by the withdrawal of such Registrable Securities a greater number of shares of Registrable Securities held by other Holders may be included in such registration (up to the maximum of any limitation imposed by the underwriters), then the Company shall offer to all Holders who have included Registrable Securities in the registration the right to include additional shares of Registrable Securities in the same proportion used in determining the underwriter limitation in this Section 3(b).

Section 4. *Selection of Counsel; Registration Expenses*

(a) The Holders of a majority of the shares of Registrable Securities included in any offering pursuant to Section 2 or 3 hereof shall have the right to designate legal counsel to represent all of the Holders in connection therewith.

(b) All Registration Expenses incurred in connection with any registration, filing, qualification or compliance pursuant to Sections 2 and 3 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by the Holders shall be borne by the Holders of such securities pro rata on the basis of the number of shares so sold.

Section 5. *Further Obligations*

(a) In connection with any registration of the sale of shares of Registrable Securities under the Securities Act pursuant to this Agreement, the Company will consult with each Holder whose Registrable Securities is to be included in any such registration concerning the form of underwriting agreement (and shall provide to each such Holder the form of underwriting agreement prior to the Company's execution thereof) and shall provide to each such Holder and its representatives such other documents (including correspondence with the Commission with respect to the registration statement and the related securities offering) as such Holder shall reasonably request in connection with its participation in such registration. The Company will furnish each Registering Stockholder whose Registrable Securities is registered thereunder and each underwriter, if any, with a copy of the registration statement and all amendments thereto and will supply each such Registering Stockholder and each underwriter, if any, with copies of any prospectus forming a part of such registration statement (including a preliminary prospectus and all amendments and supplements thereto, the "**Prospectus**"), in such quantities as may be reasonably requested for the purposes of the proposed sale or distribution covered by such registration. In the event that the Company prepares and files with the Commission a registration statement on any appropriate form under the Securities Act (a "**Registration Statement**") providing for the sale of Registrable Securities held by any Registering Stockholder pursuant to its obligations under this Agreement, the Company will:

(i) prepare and file with the Commission such Registration Statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement to become effective and, upon the request of the Holders of a majority of the shares of Registrable Securities registered thereunder, keep such Registration Statement effective until the participating Holder or Holders have completed the distribution described in such Registration Statement, which may include sales from time to time for an indefinite period of time pursuant to Rule 415 under the Securities Act (or any similar rule that may be adapted by the Commission);

(ii) prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement as may be necessary to keep such Registration Statement effective; cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during the applicable period in accordance with the intended methods of disposition by the participating Holder or Holders thereof set forth in such Registration Statement or supplement to such Prospectus;

(iii) promptly notify the Registering Stockholders and the managing underwriters, if any, (A) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (B) of any request by the Commission or any state securities commission for amendments or supplements to a Registration Statement or related Prospectus or for additional information, (C) of the issuance by the Commission or any state securities commission of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (E) of the existence of any fact which results in a Registration Statement, a Prospectus or any document incorporated therein by reference containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(iv) use commercially reasonable efforts to promptly obtain the withdrawal of any order suspending the effectiveness of a Registration Statement;

(v) if requested by the managing underwriters or a Registering Stockholder, promptly incorporate in a Prospectus supplement or post-effective amendment such information as the managing underwriters or the Registering Stockholders holding a majority of the Registrable Securities being sold by Registering Stockholders agree should be included therein relating to the sale of such Registrable Securities, including without limitation information with respect to the amount of Registrable Securities being sold to such underwriters, the purchase price being paid therefor by such underwriters and with respect to any other terms of the underwritten (or best efforts underwritten) offering of the Registrable Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(vi) furnish to such Registering Stockholder and each managing underwriter at least one signed copy of the Registration Statement and any post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference) (provided, however, that any such document made available by the Company through EDGAR shall be deemed so furnished);

(vii) deliver to such Registering Stockholders and the underwriters, if any, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such persons or entities may reasonably request;

(viii) prior to any public offering of Registrable Securities, register or qualify or cooperate with the Registering Stockholders, the underwriters, if any, and their respective counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions within the United States

as any Registering Stockholder or underwriter reasonably requests in writing and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the applicable Registration Statement; provided, however, that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so required to be qualified or to take any action which would subject it to general service of process or taxation in any such jurisdiction where it is not then so subject;

(ix) cooperate with the Registering Stockholders and the managing underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to such Registration Statement and not bearing any restrictive legends, and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request at least one (1) Business Day prior to any sale of Registrable Securities to the underwriters;

(x) if any fact described in subparagraph (iii)(E) above exists, promptly prepare and file with the Commission a supplement or post-effective amendment to the applicable Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, such Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading;

(xi) cause all Registrable Securities covered by the Registration Statement to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;

(xii) provide a CUSIP number for all Registrable Securities included in such Registration Statement, not later than the effective date of the applicable Registration Statement;

(xiii) enter into such agreements (including an underwriting agreement in form reasonably satisfactory to the Company) and take all such other reasonable actions in connection therewith in order to expedite or facilitate the disposition of such Registrable Securities, including customary participation of management; and

(xiv) make available for inspection by a representative of the Registering Stockholders whose Registrable Securities are being sold pursuant to such Registration Statement, any underwriter participating in any disposition pursuant to a Registration Statement, and any attorney or accountant retained by such Registering Stockholders or underwriter, all financial and other records and any pertinent corporate documents and properties of the Company reasonably requested by such representative, underwriter, attorney or accountant in connection with such Registration Statement; provided, however, that any records, information or documents that are designated by the Company in writing as confidential shall be kept confidential by such persons or entities unless disclosure of such records, information or documents is required by court or administrative order.

(b) Notwithstanding anything to the contrary in this Agreement, to the extent the Company is a WKSI, at the time any Registrable Securities are registered pursuant to Section 2

hereof, and the Initiating Holders so request, the Company shall file an Automatic Shelf Registration Statement which covers those shares of Registrable Securities which are requested to be registered within five (5) Business Days after receipt of such request. If the Company does not pay the filing fee covering the shares of Registrable Securities at the time the Automatic Shelf Registration Statement is filed, the Company agrees to pay such fee at such time or times as the shares of Registrable Securities are to be sold. If the Automatic Shelf Registration Statement has been outstanding for at least three (3) years, at the end of the third year the Company shall file a new Automatic Shelf Registration Statement covering the shares of Registrable Securities. If at any time when the Company is required to re-evaluate its WKSI status the Company determines that it is not a WKSI, the Company shall use its commercially reasonable efforts to file a new Shelf Registration Statement on Form S-3 (or amend the Automatic Shelf Registration Statement to a form that the Company is eligible to use) and keep such registration statement effective during the period during which such registration statement is required to be kept effective.

(c) Each Holder agrees that, upon receipt of any notice from the Company of the happening of an event of the kind described in Section 5 (a)(iii)(B) through Section 5(a)(iii)(E), such Holder will immediately discontinue disposition of shares of Registrable Securities pursuant to a Shelf Registration Statement or an Automatic Shelf Registration Statement until such stop order is vacated or such Holder receives a copy of the supplemented or amended Prospectus. If so directed by the Company, each Holder will deliver to the Company (at the reasonable expense of the Company) all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such shares of Registrable Securities at the time of receipt of such notice.

Section 6. *Further Information Furnished by Holders*

It shall be a condition precedent to the obligations of the Company to take any action pursuant to Sections 2 through 5 that the Holders shall furnish to the Company such information regarding themselves, the Registrable Securities held by them, and the intended method of disposition of such securities as shall be required to effect the registration of the sale of their Registrable Securities.

Section 7. *Indemnification*

In the event any shares of Registrable Securities are included in a Registration Statement under Section 2 or 3:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of the officers, directors, partners and agents of each Holder, any underwriter (as defined in the Securities Act) for such Holder and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or Exchange Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "**Violation**"): any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including

any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or any violation or alleged violation by the Company or any officer, director, employee, advisor or affiliate thereof of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law, and the Company will reimburse each such Holder, officer, director, partner or agent, underwriter or controlling Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 7(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld, conditioned, delayed or denied), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder or underwriter.

(b) To the extent permitted by law, each Holder will, if shares of Registrable Securities held by such Person are included in the securities as to which such registration, qualification or compliance is being effected, indemnify and hold harmless the Company, each of its directors and officers, each legal counsel and independent accountant of the Company, each Person, if any, who controls the Company within the meaning of the Securities Act, each underwriter (within the meaning of the Securities Act) of the Company's securities covered by such a registration statement, any Person who controls such underwriter, and any other Holder selling securities in such registration statement and each of its directors, officers, partners or agents or any Person who controls such Holder, against any losses, claims, damages, or liabilities (joint or several) to which the Company or any such underwriter, other Holder, director, officer, partner or agent or controlling Person may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration, and each such Holder will reimburse any legal or other expenses reasonably incurred by the Company or any such underwriter, other Holder, officer, director, partner or agent or controlling Person in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 7(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld, conditioned, delayed or denied); and provided, that in no event shall any indemnity under this Section 7(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 7, notify the indemnifying party in writing of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party

so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if the indemnified party shall have been advised by counsel that representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure of any indemnified party to notify an indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of liability to the indemnified party under this Section 7 only to the extent that such failure to give notice shall materially prejudice the indemnifying party in the defense of any such claim or any such litigation, but the omission so to notify the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 7.

(d) If the indemnification provided for in this Section 7 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder.

(e) The obligations of the Company and the Holders under this Section 7 shall survive completion of any offering of Registrable Securities pursuant to a registration statement.

(f) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with any registration provided for under Sections 2 or 3 are in conflict with the foregoing provisions of this Section 7, the provisions in such underwriting agreement shall control.

Section 8. *Rule 144 Reporting*

With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act (“*Rule 144*”) and any other rule or regulation of the Commission that may at any time permit a Holder to sell securities of the Company to the public without registration, the Company agrees to use commercially reasonable efforts to:

(a) make and keep public information available (as those terms are understood and defined in Rule 144) at all times after the date hereof;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(c) furnish to any Holder, forthwith upon request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company (provided, however, that any such report or document described in this subsection (iii) made available by the Company through EDGAR shall be deemed so furnished), and (iv) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the Commission which permits the selling of any such securities without registration or pursuant to such form.

Section 9. *Assignment of Rights*

The provisions hereof will inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, except as otherwise provided herein; *provided*, *however*, that the registration rights granted hereby may be transferred only (i) by operation of Law or (ii) to any Person to whom a Holder transfers Registrable Securities, *provided* that any such transferee shall not be entitled to rights pursuant to Section 2 or 3 hereof unless such transferee of registration rights hereunder agrees to be bound by the terms and conditions hereof and executes and delivers to the Company an acknowledgment and agreement to such effect.

Section 10. *Amendment of Registration Rights*

Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the Holders of at least sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the Registrable Securities or securities convertible into Registrable Securities. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Holder and the Company.

Section 11. *Expiration, Termination and Delay of Registration*

(a) The Company shall have no further obligations pursuant to this Agreement at such time as no shares of Registrable Securities are outstanding after their original issuance; provided, that the Parties' obligations under Sections 7 and 14 (and any related definitions) shall remain in full force and effect following such time.

(b) No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Agreement.

(c) Notwithstanding anything to the contrary herein, if the Company shall furnish to such Holder or Holders a certificate signed by the President of the Company stating that in the

good faith judgment of the board of directors of the Company that it has determined that the Company's compliance with its obligations of Sections 2 and 3 would be detrimental to the Company because such registration would (x) materially interfere with a significant acquisition, reorganization or other similar transaction involving the Company, (y) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential or (z) render the Company unable to comply with requirements under applicable securities laws, then the Company shall have the right to postpone compliance with such obligations for a period of not more than six months; provided, however, that such right may not be exercised more than twice in any 24-month period.

Section 12. *Limitations on Subsequent Registration Rights*

From and after the date hereof, the Company may, without the prior written consent of the Holders, enter into any agreement with any holder or prospective holder of any securities of the Company which provides such holder or prospective holder of securities of the Company registration rights that conflict with those granted to the Holders hereby.

Section 13. *"Market Stand-off" Agreement*

In connection with any Underwritten Offering pursuant to this Registration Rights Agreement, each Holder hereby agrees that it will not, to the extent requested by the Company and an underwriter of securities of the Company, sell or otherwise transfer or dispose of any Registrable Securities, except securities included in such registration, during the period beginning fourteen (14) days prior to the expected date of "pricing" of such offering and continuing for a period not to exceed one hundred eighty (180) days with respect to the initial public offering or ninety (90) days with respect to any offering subsequent to the initial public offering beginning on the date of such final prospectus (or prospectus supplement if the offering is made pursuant to a Shelf Registration Statement), and it will enter into agreements with the managing underwriters, if any, in connection with any such sale to give effect to the foregoing; provided, however, that all other Persons with registration rights (whether or not pursuant to this Agreement) enter into similar agreements. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each Holder (and the shares or securities of every other Person subject to the foregoing restriction) until the end of such one hundred eighty (180)-day or ninety (90)-day period.

Section 14. *Miscellaneous*

(a) *Notices* . All notices and other communications provided for or permitted hereunder shall be in writing and shall be deemed to have been duly given and received when delivered by overnight courier or hand delivery, when sent by telecopy, or five (5) days after mailing if sent by registered or certified mail (return receipt requested) postage prepaid, to the Parties at the following addresses (or at such other address for any Party as shall be specified by like notices, provided that notices of a change of address shall be effective only upon receipt thereof).

If to the Company, at:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: General Counsel

If to any Holder of Registrable Securities, to such Person's address as set forth on the records of the Company.

(b) *Counterparts* . This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) *Headings* . The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(d) *Governing Law*. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.**

(e) *Severability* . If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the Parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the Parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(f) *Entire Agreement* . This Agreement is intended by the Parties as a final expression of their agreement, and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to Registrable Securities. This Agreement supersedes all prior written or oral agreements and understandings between the Parties with respect to such subject matter.

(g) *Securities Held by the Company or its Subsidiaries* . Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or its subsidiaries shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(h) *Termination* . This Agreement shall terminate when no shares of Registrable Securities remain outstanding; provided that Sections 7 and 14 shall survive any termination hereof.

(i) *Specific Performance* . The parties hereto recognize and agree that money damages may be insufficient to compensate the Holders of any Registrable Securities for breaches by the Company of the terms hereof and, consequently, that the equitable remedy of specific performance of the terms hereof will be available in the event of any such breach.

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Registration Rights Agreement to be duly executed as of the date first above written.

S P A R K E N E R G Y , I N C .

By: _____
Name:
Title:

N U D E V C O R E T A I L H O L D I N G S , L L C

By: _____
Name:
Title:

N U D E V C O R E T A I L , L L C

By: _____
Name:
Title:

Signature Page to Registration Rights Agreement

ANNEX E

TAX RECEIVABLE AGREEMENT

(see attached)

TAX RECEIVABLE AGREEMENT

AMONG

SPARK ENERGY, INC.,

SPARK HOLDCO, LLC,

CERTAIN MEMBERS OF SPARK HOLDCO, LLC,

AND

W. KEITH MAXWELL III

DATED AS OF AUGUST 1, 2014

TAX RECEIVABLE AGREEMENT

This TAX RECEIVABLE AGREEMENT (this “Agreement”), dated as of August 1, 2014, is hereby entered into by and among Spark Energy, Inc., a Delaware corporation (the “Corporate Taxpayer”), Spark HoldCo, LLC, a Delaware limited liability company (“Spark HoldCo”), those members of Spark HoldCo set forth on Schedule A (the “Members”), and W. Keith Maxwell III (the “Agent”).

RECITALS

WHEREAS, the Members and the Corporate Taxpayer own limited liability company interests in Spark HoldCo (the “Spark HoldCo Units”), which is classified as a partnership for U.S. federal income Tax purposes;

WHEREAS, pursuant to the Transaction Agreement, dated as of June 18, 2014, by and among the Corporate Taxpayer and the Members, NuDevco Retail Holdings, LLC (“NDRH”) transferred 2,778 Spark HoldCo Units to the Corporate Taxpayer in exchange for a note from the Corporate Taxpayer (the “Pre-IPO Sale”);

WHEREAS, in connection with the Corporate Taxpayer’s initial public offering, NDRH shall sell the number of Spark HoldCo Units set forth in that agreement (which number shall be increased if the underwriters exercise their option to purchase additional shares of Class A common stock of the Corporate Taxpayer, par value \$0.01 per share (“Class A Shares”) from the Corporate Taxpayer) to the Corporate Taxpayer in exchange for cash (the “IPO Sale”);

WHEREAS, prior to the IPO Sale, the Corporate Taxpayer shall issue Class B common stock of the Corporate Taxpayer, par value \$0.01 per share (“Class B Shares”) to Spark HoldCo, and Spark HoldCo shall distribute such Class B Shares to NDRH and NuDevco Retail, LLC immediately prior to the IPO (the “Class B Shares Distribution”);

WHEREAS, pursuant to the Spark HoldCo LLC Agreement (as defined below), the Members will have the right to exchange (the “Exchange Right”) all or a portion of their Spark HoldCo Units (together with an equal number of Class B Shares) for, at the option of Spark HoldCo, either (i) Class A Shares or (ii) cash equal to the Cash Election Amount of such Class A Shares;

WHEREAS, pursuant to the Spark HoldCo LLC Agreement, following an exercise of the Exchange Right, the Corporate Taxpayer may, in its sole discretion, elect to purchase directly and acquire the Spark HoldCo Units (together with an equal number of Class B Shares) the subject of the exercise of the Exchange Right by paying to the exchanging Member, at the option of the Corporate Taxpayer, either (i) that number of Class A Shares such Member would otherwise receive pursuant to the exercise of the Exchange Right or (ii) cash equal to the Cash Election Amount of such Class A Shares (the “Call Right”);

WHEREAS, Spark HoldCo and each of its direct and indirect subsidiaries treated as a partnership, if any, has and will have in effect an election under Section 754 of the Internal Revenue Code of 1986, as amended (the “Code”), for each Taxable Year (as defined below) in

which an Exchange occurs, which election is expected to result in an adjustment to the Tax basis of the assets owned by Spark HoldCo and such subsidiaries, solely with respect to Corporate Taxpayer;

WHEREAS, this Agreement is intended to set forth the agreements among the parties regarding the sharing of the Tax benefits realized by the Corporate Taxpayer as a result of any Exchange;

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I **DEFINITIONS**

Section 1.1 Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“ Accrued Amount ” is defined in Section 3.1(b) of this Agreement.

“ Adjusted EBITDA ” means net income before provision for income Taxes, interest expense, depreciation and amortization, less (i) customer acquisition costs incurred in the applicable period, (ii) net gain (loss) on derivative instruments, (iii) net current period cash settlements on derivative instruments during the applicable period, (iv) non-cash compensation expense and (v) other non-cash operating items.

“ Affiliate ” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“ Agent ” means W. Keith Maxwell III or any other entity or individual appointed by W. Keith Maxwell III.

“ Agreed Rate ” means LIBOR plus 200 basis points.

“ Agreement ” is defined in the Recitals of this Agreement.

“ Amended Schedule ” is defined in Section 2.3(b) of this Agreement.

“ Assumed Tax Liability ” is defined in the Spark HoldCo LLC Agreement.

A “ Beneficial Owner ” of a security is a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares: (i) voting power, which includes the power to vote, or to direct the voting of, such security and/or (ii) investment power, which includes the power to dispose of, or to direct the disposition of, such security. The terms “Beneficially Own” and “Beneficial Ownership” shall have correlative meanings.

“Board” means the Board of Directors of the Corporate Taxpayer.

“Business Day” means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of Texas shall not be regarded as a Business Day.

“Call Right” is defined in the Recitals of this Agreement.

“Cash Available for Distribution” means the Adjusted EBITDA of Spark HoldCo for the applicable period, less: (i) cash interest paid by Spark HoldCo, (ii) capital expenditures of Spark HoldCo (exclusive of customer acquisition costs) and (iii) any Taxes payable by Spark HoldCo.

“Cash Election Amount” is defined in the Spark HoldCo LLC Agreement.

“Change of Control” means the occurrence of any of the following events:

- (i) any Person or any group of Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Securities and Exchange Act of 1934, or any successor provisions thereto, excluding a group of Persons which includes one or more Affiliates of W. Keith Maxwell III, is or becomes the Beneficial Owner, directly or indirectly, of securities of the Corporate Taxpayer representing more than 50% of the combined voting power of the Corporate Taxpayer’s then outstanding voting securities; or
- (ii) there is consummated a merger or consolidation of the Corporate Taxpayer with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (A) the Board immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (B) the voting securities of the Corporate Taxpayer immediately prior to such merger or consolidation do not continue to represent or are not converted into more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof; or
- (iii) the shareholders of the Corporate Taxpayer approve a plan of complete liquidation or dissolution of the Corporate Taxpayer or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Corporate Taxpayer of all or substantially all of the Corporate Taxpayer’s assets, other than such sale or other disposition by the Corporate Taxpayer of all or substantially all of the Corporate Taxpayer’s assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by shareholders of the Corporate Taxpayer in substantially the same proportions as their ownership of the Corporate Taxpayer immediately prior to such sale.

Notwithstanding the foregoing, except with respect to clause (ii)(A) above, a “Change of Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the shares of the Corporate Taxpayer immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporate Taxpayer immediately following such transaction or series of transactions.

“Class A Shares” is defined in the Recitals of this Agreement.

“Class B Shares” is defined in the Recitals of this Agreement.

“Class B Shares Distribution” is defined in the Recitals of this Agreement.

“Code” is defined in the Recitals of this Agreement.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Corporate Taxpayer” is defined in the Recitals of this Agreement.

“Corporate Taxpayer Return” means any Tax Return of the Corporate Taxpayer relating to a Tax imposed by the United States or any subdivision thereof.

“Cumulative Net Realized Tax Benefit” for a Taxable Year means the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporate Taxpayer, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedule or Amended Schedule, if any, in existence at the time of such determination.

“Default Rate” means LIBOR plus 500 basis points.

“Deferred TRA Amount” is defined in Section 3.5(a). For the avoidance of doubt, any reference to Tax Benefit Payments in this Agreement shall include any Deferred TRA Amount.

“Deferred TRA Payment Date” is defined in Section 3.5(b).

“Determination” shall have the meaning ascribed to such term in Section 1313(a) of the Code or similar provision of U.S. state or local Tax law, as applicable, or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax.

“Dispute” has the meaning set forth in Section 7.8(a) of this Agreement.

“Early Termination Date” means the date of an Early Termination Notice for purposes of determining the Early Termination Payment.

“Early Termination Effective Date” is defined in Section 4.2 of this Agreement.

“Early Termination Notice” is defined in Section 4.2 of this Agreement.

“Early Termination Payment” is defined in Section 4.3(b) of this Agreement.

“Early Termination Schedule” is defined in Section 4.2 of this Agreement.

“Exchange” means (i) any sale or deemed sale for U.S. federal income tax purposes resulting from the Pre-IPO Sale, the IPO Sale and the Class B Shares Distribution and (ii) any exchange by a Member, pursuant to either the Exchange Right or the Call Right, as applicable, of all or a portion of its Spark HoldCo Units (together with an equal number of Class B Shares) for, at the option of Spark HoldCo or the Corporate Taxpayer, as applicable, either (A) Class A Shares or (B) cash equal to the Cash Election Amount of such Class A Shares.

“Exchange Basis Adjustment” means any adjustment to the Tax basis of a Reference Asset as a result of an Exchange (as calculated under Section 2.1 of this Agreement), including, but not limited to: (i) under Sections 743(b) and 754 of the Code (including in situations where, following an Exchange, Spark HoldCo remains in existence as an entity for Tax purposes); (ii) under Section 732(b) of the Code (in situations where, as a result of one or more Exchanges, Spark HoldCo becomes an entity that is disregarded as separate from its owner for Tax purposes); (iii) under Section 707(a)(2)(B) of the Code; (iv) under Section 737 of the Code; (v) if the IPO Sale were characterized as if the Corporate Taxpayer purchased an interest in each of the Company’s assets from NDRH’s U.S. federal income tax owner and immediately thereafter the Corporate Taxpayer and NDRH’s U.S. federal income tax owner contributed their respective interests in the Company’s assets to the Company in exchange for Spark HoldCo Units (as described in Situation 1 of Rev. Rul. 99-5, 1999-1 C.B. 434); and (vi) in each case, comparable provisions of U.S. state or local Tax laws. Notwithstanding any other provision of this Agreement, the amount of any Exchange Basis Adjustment resulting from an Exchange of one or more Spark HoldCo Units shall be determined without regard to any Pre-Exchange Transfer of such Spark HoldCo Units and as if any such Pre-Exchange Transfer had not occurred.

“Exchange Basis Schedule” is defined in Section 2.1 of this Agreement.

An “Exchange Date” means each date on which an Exchange occurs.

“Exchange Right” is defined in the Recitals of this Agreement.

“Exchange Tax Basis” means, with respect to any Reference Asset at any time, the Tax basis that such asset would have had at such time if no Exchange Basis Adjustments had been made.

“Expert” is defined in Section 7.9 of this Agreement.

“Five-Year Deferral Period” means the period beginning on October 1, 2014 and ending on September 30, 2019.

“Hypothetical Tax Liability” means, with respect to any Taxable Year, the liability for Taxes of (i) the Corporate Taxpayer and (ii) without duplication, Spark HoldCo, but only with respect to Taxes imposed on Spark HoldCo and allocable to the Corporate Taxpayer, in each case using the same methods, elections, conventions and similar practices used on the relevant Corporate Taxpayer Return, but (A) using the Exchange Tax Basis as reflected on the Exchange Basis Schedule including amendments thereto for the Taxable Year and (B) excluding any deduction attributable to Imputed Interest for the Taxable Year. For the avoidance of doubt, Hypothetical Tax Liability shall be determined without taking into account the carryover or carryback of any Tax item (or portions thereof) that is attributable to the Exchange Basis Adjustment or Imputed Interest.

“Imputed Interest” shall mean any interest imputed under Section 1272, 1274 or 483 or other provision of the Code and any similar provision of U.S. state or local Tax law with respect to the Corporate Taxpayer’s payment obligations under this Agreement.

“IPO” means the initial public offering of Class A Shares by the Corporate Taxpayer

“IPO Date” means the closing date of the IPO.

“IPO Sale” is defined in the Recitals of this Agreement.

“IRS” means the U.S. Internal Revenue Service.

“LIBOR” means during any period, an interest rate per annum equal to the one-year LIBOR rate reported, on the date two (2) calendar days prior to the first day of such period, on the Telerate Page 3750 (or if such screen shall cease to be publicly available, as reported on Reuters Screen page “LIBOR01” or by any other publicly available source of such market rate) for London interbank offered rates for United States dollar deposits for such period; provided, however, that for purposes of calculating the Early Termination Payment “LIBOR” means the rate for U.S. dollar swaps with a maturity of 30 years that appears on Reuters Screen page “ISDAFIX1” under the heading “30YR” as of 11 a.m. New York City time on the date two (2) business days prior to the Early Termination Date (or if such screen shall cease to be publicly available, by any other publicly available source of such market rate).

“Market Value” shall mean the closing price of the Class A Shares on the applicable Exchange Date on the national securities exchange or interdealer quotation system on which such Class A Shares are then traded or listed, as reported by the Wall Street Journal; provided, that if the closing price is not reported by the Wall Street Journal for the applicable Exchange Date, then the Market Value shall mean the closing price of the Class A Shares on the Business Day immediately preceding such Exchange Date on the national securities exchange or interdealer quotation system on which such Class A Shares are then traded or listed, as reported by the Wall Street Journal; provided further that if the Class A Shares are not then listed on a national securities exchange or interdealer quotation system, “Market Value” shall mean the cash consideration paid for Class A Shares, or the fair market value of the other property delivered for Class A Shares, as determined by the Board in good faith.

“Material Objection Notice” has the meaning set forth in Section 4.2 of this Agreement.

“Member” is defined in the Recitals of this Agreement.

“NDRH” is defined in the Recitals of this Agreement.

“Net Tax Benefit” is defined in Section 3.1(b) of this Agreement.

“Objection Notice” has the meaning set forth in Section 2.3(a) of this Agreement.

“Opt Out Notice” is defined in Section 3.4(a) of this Agreement.

“Payment Date” means any date on which a payment is required to be made pursuant to this Agreement.

“Person” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

“Pre-Exchange Transfer” means any transfer or distribution in respect of Spark HoldCo Units (i) that occurs prior to an Exchange of such Spark HoldCo Units, and (ii) to which Section 743(b) of the Code applies.

“Pre-IPO Sale” is defined in the Recitals of this Agreement.

“Qualified Tax Advisor” means Vinson & Elkins L.L.P. or any other law or accounting firm that is nationally recognized as being expert in Tax matters and that is reasonably acceptable to the Corporate Taxpayer

“Quarterly Distribution Date” is defined in the Spark HoldCo LLC Agreement.

“Realized Tax Benefit” means, for a Taxable Year, the excess, if any, of the Hypothetical Tax Liability over the actual liability for Taxes of (i) the Corporate Taxpayer and (ii) without duplication, Spark HoldCo, but for purposes of clause (ii), only with respect to Taxes imposed on Spark HoldCo and allocable to the Corporate Taxpayer for such Taxable Year. If all or a portion of the actual liability for such Taxes for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination.

“Realized Tax Detriment” means, for a Taxable Year, the excess, if any, of the actual liability for Taxes of (i) the Corporate Taxpayer and (ii) without duplication, Spark HoldCo, but for purposes of clause (ii), only with respect to Taxes imposed on Spark HoldCo and allocable to the Corporate Taxpayer for such Taxable Year, over the Hypothetical Tax Liability for such Taxable Year. If all or a portion of the actual liability for such Taxes for the Taxable Year arises

as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination.

“Reconciliation Dispute” has the meaning set forth in Section 7.9 of this Agreement.

“Reconciliation Procedures” has the meaning set forth in Section 2.3(a) of this Agreement.

“Reference Asset” means an asset that is held by Spark HoldCo, or by any of its direct or indirect subsidiaries treated as a partnership or disregarded entity for purposes of the applicable Tax, at the time of an Exchange. A Reference Asset also includes any asset that is “substituted basis property” under Section 7701(a)(42) of the Code with respect to a Reference Asset.

“Schedule” means any of the following: (i) an Exchange Basis Schedule, (ii) a Tax Benefit Schedule, or (iii) the Early Termination Schedule.

“Senior Obligations” is defined in Section 5.1 of this Agreement.

“Spark HoldCo” is defined in the Recitals of this Agreement.

“Spark HoldCo LLC Agreement” means the Second Amended and Restated Limited Liability Company Agreement of Spark HoldCo.

“Spark HoldCo Units” is defined in the Recitals of this Agreement.

“Subsequent Due Date” is defined in Section 4.1(b) of this Agreement.

“Subsidiaries” means, with respect to any Person, as of any date of determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise controls more than 50% of the voting power or other similar interests or the sole general partner interest or managing member or similar interest of such Person.

“Target Distribution” means target distributions with respect to Class A Shares of \$0.3625 per share per quarter.

“Tax Benefit Payment” is defined in Section 3.1(b) of this Agreement.

“Tax Benefit Schedule” is defined in Section 2.2 of this Agreement.

“Tax Return” means any return, declaration, report or similar statement required to be filed with respect to Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

“Taxable Year” means a taxable year of the Corporate Taxpayer as defined in Section 441(b) of the Code or comparable section of U.S. state or local Tax law, as applicable (and, therefore, for the avoidance of doubt, may include a period of less than twelve (12) months for which a Tax Return is made), ending on or after the IPO Date.

“Taxes” means any and all taxes, assessments or similar charges imposed by the United States or any subdivision thereof that are based on or measured with respect to net income or profits, and any interest related to such Tax.

“Taxing Authority” shall mean any federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

“Tax Distribution Date” is defined in the Spark HoldCo LLC Agreement.

“Total Distributions” means the aggregate distributions of Spark HoldCo necessary to cause the Corporate Taxpayer to receive distributions of cash equal to (i) the Target Distribution on each Quarterly Distribution Date during the applicable four-quarter period, plus (ii) its Assumed Tax Liability on each Tax Distribution Date during such four-quarter period, plus (iii) the expected Tax Benefit Payment payable during the calendar year for which the TRA Coverage Ratio is being tested.

“TRA Coverage Ratio” is defined in Section 3.5(a).

“TRA Holder” means the Members and their respective successors and assigns pursuant to Section 7.6(a).

“Treasury Regulations” means the final, temporary and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant Taxable Year.

“Valuation Assumptions” shall mean, as of an Early Termination Date, the assumptions that (i) in each Taxable Year ending on or after such Early Termination Date, the Corporate Taxpayer will have taxable income sufficient to fully utilize the deductions arising from the Exchange Basis Adjustments and the Imputed Interest during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, Exchange Basis Adjustments and Imputed Interest that would result from future Tax Benefit Payments that would be paid in accordance with the Valuation Assumptions) in which such deductions would become available, (ii) the U.S. federal income tax rates and state and local income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Date, (iii) any loss carryovers generated by any Exchange Basis Adjustment or Imputed Interest and available as of the date of the Early Termination Schedule will be utilized by the Corporate Taxpayer on a pro rata basis from the date of the Early Termination Schedule through the scheduled expiration date of such loss carryovers, (iv) any non-amortizable assets will be disposed of on the fifteenth anniversary of the applicable Basis Adjustment, and (v) if, at the Early Termination Date, there are Spark HoldCo Units that have not been Exchanged, then each such Spark HoldCo Units shall be deemed to be Exchanged for the Market Value of the Class A Shares and the amount of cash that would be transferred if the Exchange occurred on the Early Termination Date.

Section 1.2 Other Definitional and Interpretative Provisions. The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE II
DETERMINATION OF CERTAIN REALIZED TAX BENEFIT

Section 2.1 Basis Adjustment Schedule. Within sixty (60) calendar days after the filing of the U.S. federal income Tax Return of the Corporate Taxpayer for each Taxable Year in which any Exchange has been effected, the Corporate Taxpayer shall deliver to Agent a schedule (the “Exchange Basis Schedule”) that shows, in reasonable detail necessary to perform the calculations required by this Agreement, including with respect to each Exchanging Person, (i) the Exchange Tax Basis of the Reference Assets as of each applicable Exchange Date, (ii) the Exchange Basis Adjustments with respect to the Reference Assets as a result of the Exchanges effected in such Taxable Year, calculated in the aggregate, (iii) the period (or periods) over which the Reference Assets are amortizable and/or depreciable and (iv) the period (or periods) over which each Exchange Basis Adjustment is amortizable and/or depreciable. For the avoidance of doubt, payments made under this Agreement shall not be treated as resulting in an Exchange Basis Adjustment to the extent such payments are treated as Imputed Interest.

Section 2.2 Tax Benefit Schedule. Within sixty (60) calendar days after the filing of the U.S. federal income Tax Return of the Corporate Taxpayer for any Taxable Year in which there is a Realized Tax Benefit or Realized Tax Detriment, the Corporate Taxpayer shall provide to Agent: (i) a schedule showing, in reasonable detail, the calculation of the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year (a “Tax Benefit Schedule”), (ii) the Corporate Taxpayer Return, (iii) a reasonably detailed calculation by the Corporate Taxpayer of the Hypothetical Tax Liability, (iv) a reasonably detailed calculation by the Corporate Taxpayer of the actual Tax liability, and (v) any other work papers requested by Agent. In addition, the

Corporate Taxpayer shall allow Agent reasonable access at no cost to the appropriate representatives of the Corporate Taxpayer in connection with a review of such Tax Benefit Schedule. The Tax Benefit Schedule will become final as provided in Section 2.3(a) and may be amended as provided in Section 2.3(b) (subject to the procedures set forth in Section 2.3(b)).

Section 2.3 Procedure; Amendments.

(a) Procedure. An applicable Schedule or amendment thereto shall become final and binding on all parties thirty (30) calendar days from the first date on which Agent has received the applicable Schedule or amendment thereto unless Agent (i) within thirty (30) calendar days after receiving an applicable Schedule or amendment thereto, provides the Corporate Taxpayer with notice of a material objection to such Schedule (“Objection Notice”) made in good faith or (ii) provides a written waiver of such right of any Objection Notice within the period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date the waiver is received by the Corporate Taxpayer. If the parties, for any reason, are unable to successfully resolve the issues raised in an Objection Notice within thirty (30) calendar days after receipt by the Corporate Taxpayer of such Objection Notice, the Corporate Taxpayer and Agent shall employ the reconciliation procedures described in Section 7.9 of this Agreement (the “Reconciliation Procedures”).

(b) Amended Schedule. The applicable Schedule for any Taxable Year may be amended from time to time by the Corporate Taxpayer (i) in connection with a Determination affecting such Schedule, (ii) to correct material inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was provided to Agent, (iii) to comply with the Expert’s determination under the Reconciliation Procedures, (iv) to reflect a material change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other Tax item to such Taxable Year, (v) to reflect a material change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year or (vi) to adjust an Exchange Basis Schedule to take into account payments made pursuant to this Agreement (any such Schedule, an “Amended Schedule”).

ARTICLE III
TAX BENEFIT PAYMENTS

Section 3.1 Payments.

(a) Payments. Subject to Section 3.5, within five (5) calendar days after a Tax Benefit Schedule delivered to Agent becomes final in accordance with Section 2.3(a), the Corporate Taxpayer shall pay to each TRA Holder its proportionate share of the Tax Benefit Payment determined pursuant to Section 3.1(b) for such Taxable Year. Each such payment shall be made by wire transfer of immediately available funds to the bank account previously designated by the TRA Holder to the Corporate Taxpayer or as otherwise agreed by the Corporate Taxpayer and the TRA Holder. For the avoidance of doubt, no Tax Benefit Payment shall be made in respect of estimated Tax payments, including, without limitation, U.S. federal estimated income Tax payments. Notwithstanding the foregoing, the Corporate Taxpayer shall have no obligation to make a Tax Benefit Payment with respect to a Taxable Year prior to December 19 of the subsequent calendar year.

(b) A “Tax Benefit Payment” means the sum of the Net Tax Benefit and the Accrued Amount. Subject to Section 3.3, the “Net Tax Benefit” for a Taxable Year shall be an amount equal to the excess, if any, of 85% of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year over the total amount of payments previously made under this Section 3.1 (excluding payments attributable to Accrued Amounts); provided, for the avoidance of doubt, that a TRA Holder shall not be required to return any portion of any previously made Tax Benefit Payment. The “Accrued Amount” shall equal the interest on the Net Tax Benefit calculated at the Agreed Rate from the due date (without extensions) for filing the Corporate Taxpayer Return with respect to Taxes for such Taxable Year until the Payment Date. For the avoidance of doubt, for Tax purposes, the Accrued Amount shall not be treated as interest but shall instead be treated as additional consideration for the acquisition of Spark HoldCo Units in an Exchange unless otherwise required by law.

Section 3.2 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under this Agreement. It is also intended that the provisions of this Agreement will result in 85% of the Cumulative Net Realized Tax Benefit, and the Accrued Amount thereon, being paid to the TRA Holders pursuant to this Agreement. The provisions of this Agreement shall be construed in the appropriate manner to achieve these fundamental results.

Section 3.3 Proportionate Share and Pro Rata Payments.

(a) Proportionate Share. For purposes of this Agreement, a TRA Holder’s “proportionate share” for any Taxable Year equals (i) the deductions available for use in such Taxable Year associated with the Exchange Basis Adjustments and the Imputed Interest attributable to such TRA Holder, divided by (ii) the deductions associated with all Exchange Basis Adjustments and all Imputed Interest that are available for use in such Taxable Year.

(b) Pro Rata Payments. If the Corporate Taxpayer lacks sufficient funds to satisfy or is prevented under any credit agreement or other arrangement from satisfying its obligations to make all Tax Benefit Payments due in a particular Taxable Year, each TRA Holder shall receive its proportionate share of the total funds available in the Taxable Year to make the Tax Benefit Payments.

Section 3.4 Opt Out.

(a) Notwithstanding Section 3.1, prior to an Exchange, a TRA Holder may elect not to receive any payments under this Agreement with respect to such Exchange, by delivering written notice evidencing such election (an “Opt Out Notice”) to the Corporate Taxpayer at least three Business Days prior to the Exchange Date of the relevant Exchange. An Opt Out Notice, when delivered, shall be irrevocable.

(b) This Agreement shall not apply to any Exchange which is covered by an Opt Out Notice delivered pursuant to Section 3.4(a), and all computations hereunder, including the computation of any Tax Benefit Payments and determination of any amounts attributable to a TRA Holder, shall be made without taking into account Exchanges covered by such Opt Out Notice. For the avoidance of doubt, a TRA Holder who makes an election pursuant to Section 3.4(a) shall remain entitled to payments under this Agreement with respect to any Exchanges for which no election has been made pursuant to Section 3.4(a).

Section 3.5 Five-Year Deferral Period.

(a) Any Tax Benefit Payment that would otherwise be due and payable pursuant to Section 3.1(a) during the Five-Year Deferral Period shall be reduced to the extent necessary to cause the TRA Coverage Ratio with respect to such Tax Benefit Payment to be met. The “TRA Coverage Ratio” shall be met with respect to a Tax Benefit Payment if Cash Available for Distribution during the four-quarter period ending on September 30 of the calendar year in which such Tax Benefit Payment would be due and payable equals or exceeds 130% of the Total Distributions for such four-quarter period. The cumulative amount by which any Tax Benefit Payments are reduced pursuant this Section 3.5(a) is referred to herein as the “Deferred TRA Amount.” For the avoidance of doubt, in the event that the TRA Coverage Ratio is met with respect to any portion of a Tax Benefit Payment, that portion of the Tax Benefit Payment shall be due and payable under Section 3.1(a), with the remainder being added to the Deferred TRA Amount.

(b) Subject to Section 3.5(c), the Corporate Taxpayer shall pay the Deferred TRA Amount as soon as practicable following the expiration of the Five-Year Deferral Period and in no event later than October 10, 2019 (the date of such actual payment, the “Deferred TRA Payment Date”).

(c) The Deferred TRA Amount shall not exceed (i) the lesser of (A) the Corporate Taxpayer’s proportionate share of the aggregate Cash Available for Distribution during the Five-Year Deferral Period or (B) the cash distributions from Spark HoldCo actually received by the Corporate Taxpayer during the Five-Year Deferral Period, reduced by (ii) the sum of (A) the aggregate of the Target Distributions on each Quarterly Distribution Date during the Five-Year Deferral Period, plus (B) the Corporate Taxpayer’s Assumed Tax Liability on each Tax Distribution Date during the Five-Year Deferral period, plus (C) all prior Tax Benefit Payments.

(d) For purposes of illustration, sample calculations of the TRA Coverage Ratio and examples of non-deferral, full deferral, and partial deferral are set forth in Schedule B attached hereto.

ARTICLE IV
TERMINATION

Section 4.1 Early Termination, Breach of Agreement and Payment Related to Change of Control.

(a) The Corporate Taxpayer may terminate this Agreement at any time by paying to each TRA Holder its proportionate share of the Early Termination Payment. Upon payment of the Early Termination Payment by the Corporate Taxpayer, the Corporate Taxpayer shall not have any further payment obligations under this Agreement, other than for (i) any Tax Benefit Payment agreed to by the Corporate Taxpayer acting in good faith and any TRA Holder as due and payable but unpaid as of the Early Termination Notice and (ii) any Tax Benefit Payment due for the Taxable Year ending with or including the date of the Early Termination Notice (except to the extent that the amount described in clause (ii) is included in the Early Termination Payment). Upon payment of all amounts provided for in this Section 4.1(a), this Agreement shall terminate.

(b) In the event that the Corporate Taxpayer breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due, failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise, then all obligations hereunder shall be accelerated and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such breach and shall include, but shall not be limited to, (i) the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the date of a breach, (ii) any Tax Benefit Payment agreed to by the Corporate Taxpayer acting in good faith and any TRA Holder as due and payable but unpaid as of the date of a breach, and (iii) any Tax Benefit Payment due for the Taxable Year ending with or including the date of a breach. Notwithstanding the foregoing, in the event that the Corporate Taxpayer breaches this Agreement, the TRA Holders shall be entitled to elect to receive the amounts set forth in clauses (i), (ii) and (iii) above or to seek specific performance of the terms hereof. The parties agree that the failure to make any payment due pursuant to this Agreement within three (3) months of the date such payment is due shall be deemed to be a breach of a material obligation under this Agreement for all purposes of this Agreement, and that it shall not be considered to be a breach of a material obligation under this Agreement to make a payment due pursuant to this Agreement within three (3) months of the date such payment is due. Notwithstanding anything in this Agreement to the contrary, it shall not be a breach of this Agreement if the Corporate Taxpayer fails to make any Tax Benefit Payment when due to the extent that the Corporate Taxpayer has insufficient funds to make such payment; provided that the interest provisions of Section 5.2 shall apply to such late payment (unless the Corporate Taxpayer does not have sufficient cash to make such payment as a result of limitations imposed by existing credit agreements to which Spark HoldCo or any Subsidiary of Spark HoldCo is a party, in which case Section 5.2 shall apply, but the Default Rate shall be replaced by the Agreed Rate); provided further that it shall be a breach of this Agreement, and the provisions in the first two sentences of this Section 4.1(b) shall apply as of the original due date of the Tax Benefit Payment, if the Corporate Taxpayer makes any distribution of cash or other property to its

shareholders in excess of the Target Distribution while any Tax Benefit Payment is due and payable but unpaid. Any Tax Benefit Payment that is not paid when due pursuant to this Section 4.1(b) shall be due on the date of the next Tax Benefit Payment (the “Subsequent Due Date”). If all or a portion of any Tax Benefit Payment is not made to any TRA Holder on the Subsequent Due Date, such payment may be further deferred pursuant to the provisions of this Section 4.1(b) and shall continue to accrue interest pursuant to Section 5.2.

(c) The Corporate Taxpayer and each TRA Holder hereby acknowledges that, as of the date of this Agreement, the aggregate value of the Tax Benefit Payments cannot reasonably be ascertained for U.S. federal income Tax or other applicable Tax purposes.

(d) In the event of a Change of Control, all obligations hereunder shall be accelerated and such obligations shall be calculated pursuant to this Article IV as if an Early Termination Notice had been delivered on the closing date of the Change of Control and shall include, but not be limited to, (i) the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the effective date of a Change of Control, (ii) any Tax Benefit Payment in respect of a TRA Holder agreed to by the Corporation and such TRA Holder as due and payable but unpaid as of the Early Termination Notice and (iii) any Tax Benefit Payment due for any Taxable Year ending prior to, with or including the effective date of a Change of Control. In the event of a Change of Control, the Early Termination Payment shall be calculated utilizing the Valuation Assumptions and by substituting in each case the terms “the closing date of a Change of Control” for an “Early Termination Date.”

Section 4.2 Early Termination Notice. If the Corporate Taxpayer chooses to exercise its right of early termination under Section 4.1(a) above, the Corporate Taxpayer shall deliver to Agent notice of such intention to exercise such right (the “Early Termination Notice”) and a schedule (the “Early Termination Schedule”) specifying the Corporate Taxpayer’s intention to exercise such right and showing in reasonable detail the calculation of the Early Termination Payment. The Early Termination Schedule shall become final and binding on all parties thirty (30) calendar days from the first date on which Agent has received such Schedule or amendment thereto unless Agent (i) within thirty (30) calendar days after receiving the Early Termination Schedule, provides the Corporate Taxpayer with notice of a material objection to such Schedule made in good faith (“Material Objection Notice”) or (ii) provides a written waiver of such right of a Material Objection Notice within the period described in clause (i) above, in which case such Schedule becomes binding on the date the waiver is received by the Corporate Taxpayer (the “Early Termination Effective Date”). If the parties, for any reason, are unable to successfully resolve the issues raised in such notice within thirty (30) calendar days after receipt by the Corporate Taxpayer of the Material Objection Notice, the Corporate Taxpayer and Agent shall employ the Reconciliation Procedures.

Section 4.3 Payment upon Early Termination.

(a) Within three (3) calendar days after the Early Termination Effective Date, the Corporate Taxpayer shall pay to each TRA Holder its Early Termination Payment. Each such payment shall be made by wire transfer of immediately available funds to a bank account or accounts designated by the TRA Holder or as otherwise agreed by the Corporate Taxpayer and the TRA Holder.

(b) “ Early Termination Payment ” shall equal, with respect to each TRA Holder, the present value, discounted at the Agreed Rate as of the Early Termination Date, of all Tax Benefit Payments that would be required to be paid by the Corporate Taxpayer to the TRA Holder beginning from the Early Termination Date and assuming that the Valuation Assumptions are applied; provided that, in the event the Early Termination Effective Date occurs prior to or on the same date as the Deferred TRA Payment Date, the Deferred TRA Amount shall be included in the Early Termination Payment without regard to the limitations set forth in Section 3.5(c) .

ARTICLE V
SUBORDINATION AND LATE PAYMENTS

Section 5.1 Subordination . Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment, Deferred TRA Amount or Early Termination Payment required to be made by the Corporate Taxpayer to any TRA Holder under this Agreement shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any obligations in respect of indebtedness for borrowed money of the Corporate Taxpayer and its Subsidiaries (“ Senior Obligations ”) and shall rank pari passu with all current or future unsecured obligations of the Corporate Taxpayer that are not Senior Obligations. For the avoidance of doubt, notwithstanding the above, the determination of whether it is a breach of this Agreement if the Corporate Taxpayer fails to make any Tax Benefit Payment when due is governed by Section 4.1(b) .

Section 5.2 Late Payments by the Corporate Taxpayer . The amount of all or any portion of any Tax Benefit Payment, Deferred TRA Amount or Early Termination Payment not made to any TRA Holder when due under the terms of this Agreement shall be payable together with any interest thereon, computed at the Default Rate (or, if so provided in Section 4.1(b) , at the Agreed Rate) and commencing from the date on which such Tax Benefit Payment, Deferred TRA Amount or Early Termination Payment was due and payable. For the avoidance of doubt, no interest (other than the Accrued Amount) shall accrue on any Deferred TRA Amount during the Five-Year Deferral Period, but interest shall accrue as provided in this Section 5.2 on the amount of all or any portion of any Deferred TRA Amount not made to any TRA Holder as provided in Section 3.5(b) .

ARTICLE VI
NO DISPUTES; CONSISTENCY; COOPERATION

Section 6.1 Participation in the Corporate Taxpayer’s and Spark HoldCo’s Tax Matters . Except as otherwise provided herein, the Corporate Taxpayer shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporate Taxpayer and Spark HoldCo, including without limitation the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to Taxes. Notwithstanding the foregoing, the Corporate Taxpayer shall notify Agent of, and keep Agent reasonably informed with respect to, the portion of any audit of the Corporate Taxpayer and Spark HoldCo by a

Taxing Authority the outcome of which is reasonably expected to affect the rights and obligations of the TRA Holders under this Agreement, and shall provide to Agent reasonable opportunity to provide information and other input to the Corporate Taxpayer, Spark HoldCo and their respective advisors concerning the conduct of any such portion of such audit; provided, however, that the Corporate Taxpayer and Spark HoldCo shall not be required to take any action that is inconsistent with any provision of the Spark HoldCo LLC Agreement.

Section 6.2 Consistency. Except upon the written advice of a Qualified Tax Advisor, and except for items that are explicitly characterized as “deemed” or in a similar manner by the terms of this Agreement, the Corporate Taxpayer and the TRA Holders agree to report and cause to be reported for all purposes, including U.S. federal, state, local and non-U.S. Tax purposes and financial reporting purposes, all Tax-related items (including, without limitation, the Reference Assets and each Tax Benefit Payment) in a manner consistent with that specified by the Corporate Taxpayer in any Schedule required to be provided by or on behalf of the Corporate Taxpayer under this Agreement. Any Dispute concerning such advice shall be subject to the terms of Section 7.9.

Section 6.3 Cooperation. Each TRA Holder shall (i) furnish to the Corporate Taxpayer in a timely manner such information, documents and other materials as the Corporate Taxpayer may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any audit, examination or controversy with any Taxing Authority, (ii) make itself available to the Corporate Taxpayer and its representatives to provide explanations of documents and materials and such other information as the Corporate Taxpayer or its representatives may reasonably request in connection with any of the matters described in clause (i) above, and (iii) reasonably cooperate in connection with any such matter, and the Corporate Taxpayer shall reimburse the TRA Holder for any reasonable third-party costs and expenses incurred pursuant to this Section 6.3.

ARTICLE VII MISCELLANEOUS

Section 7.1 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed duly given and received (i) on the date of delivery if delivered personally, or by facsimile upon confirmation of transmission by the sender’s fax machine if sent on a Business Day (or otherwise on the next Business Day) or (ii) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to the Corporate Taxpayer, to:
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: General Counsel

with a copy (which shall not constitute notice to the Corporate Taxpayer) to:

Vinson & Elkins L.L.P.
1001 Fannin, Suite 2500
Houston, Texas 77002-6760
Telephone: 713-758-2977
Attention: Sarah Morgan

If to Agent, to:

W. Keith Maxwell III
2105 CityWest Blvd, Suite 100
Houston, Texas 77042

If to a TRA Holder, other than Agent, that is a partner in Spark HoldCo, to:

The address set forth in the records of Spark HoldCo.

Any party may change its address or fax number by giving the other party written notice of its new address or fax number in the manner set forth above.

Section 7.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 7.3 Entire Agreement; No Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Texas, without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section 7.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this

Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.6 Successors; Assignment; Amendments; Waivers.

(a) No TRA Holder may assign this Agreement to any person without the prior written consent of the Corporate Taxpayer; provided, however, that (i) to the extent Spark HoldCo Units are transferred in accordance with the terms of the Spark HoldCo LLC Agreement, the transferring TRA Holder shall have the option to assign to the transferee of such Spark HoldCo Units the transferring TRA Holder's rights under this Agreement with respect to such transferred Spark HoldCo Units as long as such transferee has executed and delivered, or, in connection with such transfer, executes and delivers, a joinder to this Agreement, in form and substance reasonably satisfactory to the Corporate Taxpayer, agreeing to become a "TRA Holder" for all purposes of this Agreement, except as otherwise provided in such joinder, and (ii) any and all payments payable or that may become payable to a TRA Holder pursuant to this Agreement (A) that do not arise from an Exchange and (B) that, once an Exchange has occurred, arise with respect to the Exchanged Spark HoldCo Units, may be assigned to any Person or Persons as long as any such Person has executed and delivered, or, in connection with such assignment, executes and delivers, a joinder to this Agreement, in form and substance reasonably satisfactory to the Corporate Taxpayer, agreeing to be bound by Section 7.12 and acknowledging specifically the terms of Section 7.6(b). For the avoidance of doubt, if a TRA Holder transfers Spark HoldCo Units but does not assign to the transferee of such Spark HoldCo Units the rights of such TRA Holder under this Agreement with respect to such transferred Spark HoldCo Units, such TRA Holder shall continue to be entitled to receive the Tax Benefit Payments, if any, due hereunder with respect to, including any Tax Benefit Payments arising in respect of a subsequent Exchange of, such Spark HoldCo Units.

(b) Notwithstanding the foregoing provisions of this Section 7.6, no transferee described in clause (i) of the first sentence of Section 7.6(a) shall have the right to enforce the provisions of Section 2.3, Section 4.2, or Section 6.2 of this Agreement, and no assignee described in clause (ii) of the first sentence of Section 7.6(a) shall have any rights under this Agreement except for the right to enforce its right to receive payments under this Agreement.

(c) No provision of this Agreement may be amended unless such amendment is approved in writing by each of the Corporate Taxpayer and Spark HoldCo and by TRA Holders who would be entitled to receive at least two-thirds of the Early Termination Payments payable to all TRA Holders hereunder if the Corporate Taxpayer had exercised its right of early termination on the date of the most recent Exchange prior to such amendment (excluding, for purposes of this sentence, all payments made to any TRA Holder pursuant to this Agreement since the date of such most recent Exchange); provided, however, that no such amendment shall be effective if such amendment would have a disproportionate effect on the payments certain TRA Holders will or may receive under this Agreement unless all such disproportionately affected TRA Holders consent in writing to such amendment. No provision of this Agreement may be waived unless such waiver is in writing and signed by the party against whom the waiver is to be effective.

(d) Except as otherwise specifically provided herein, all of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. the Corporate Taxpayer shall cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporate Taxpayer, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporate Taxpayer would be required to perform if no such succession had taken place. Notwithstanding anything to the contrary herein, in the event a TRA Holder transfers his Spark HoldCo Units to a Permitted Transferee (as defined in the Spark HoldCo LLC Agreement), such TRA Holder shall have the right, on behalf of such transferee, to enforce the provisions of Section 2.3, Section 4.2 or Section 6.2 with respect to such transferred Spark HoldCo Units.

Section 7.7 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 7.8 Resolution of Disputes.

(a) Any and all disputes which are not governed by Section 7.9, including any ancillary claims of any party, arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of this Section 7.8 and Section 7.9) (each a “Dispute”) shall be governed by this Section 7.8. The parties hereto shall attempt in good faith to resolve all Disputes by negotiation. If a Dispute between the parties hereto cannot be resolved in such manner, such Dispute shall be finally settled by arbitration conducted by a single arbitrator in Texas in accordance with the then-existing Rules of Arbitration of the International Chamber of Commerce. If the parties to the Dispute fail to agree on the selection of an arbitrator within ten (10) calendar days of the receipt of the request for arbitration, the International Chamber of Commerce shall make the appointment. The arbitrator shall be a lawyer admitted to the practice of law in the State of Texas and shall conduct the proceedings in the English language. Performance under this Agreement shall continue if reasonably possible during any arbitration proceedings. In addition to monetary damages, the arbitrator shall be empowered to award equitable relief, including an injunction and specific performance of any obligation under this Agreement. The arbitrator is not empowered to award damages in excess of compensatory damages, and each party hereby irrevocably waives any right to recover punitive, exemplary or similar damages with respect to any Dispute. The award shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accounting presented to the arbitral tribunal. Judgment upon any award may be entered and enforced in any court having jurisdiction over a party or any of its assets.

(b) Notwithstanding the provisions of Section 7.8(a), the Corporate Taxpayer may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling a party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this Section 7.8(b), Agent and each TRA Holder (i) expressly consents to the application of Section 7.8(c) to any

such action or proceeding, (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate, and (iii) irrevocably appoints the Corporate Taxpayer as agent of such party for service of process in connection with any such action or proceeding and agrees that service of process upon such agent, who shall promptly advise such party in writing of any such service of process, shall be deemed in every respect effective service of process upon such party in any such action or proceeding.

(c) (i) EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF COURTS LOCATED IN HARRIS COUNTY, TEXAS, FOR THE PURPOSE OF ANY JUDICIAL PROCEEDING BROUGHT IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (B) OF THIS SECTION 7.8, OR ANY JUDICIAL PROCEEDING ANCILLARY TO AN ARBITRATION OR CONTEMPLATED ARBITRATION ARISING OUT OF OR RELATING TO OR CONCERNING THIS AGREEMENT. Such ancillary judicial proceedings include any suit, action or proceeding to compel arbitration, to obtain temporary or preliminary judicial relief in aid of arbitration, or to confirm an arbitration award. The parties acknowledge that the fora designated by this Section 7.8(c) have a reasonable relation to this Agreement, and to the parties' relationship with one another; and

(ii) The parties hereby waive, to the fullest extent permitted by applicable law, any objection which they now or hereafter may have to personal jurisdiction or to the laying of venue of any such ancillary suit, action or proceeding brought in any court referred to in Section 7.8(c)(i) and such parties agree not to plead or claim the same.

Section 7.9 Reconciliation. In the event that the Corporate Taxpayer and Agent or the relevant TRA Holder, as applicable, are unable to resolve a disagreement with respect to the matters governed by Section 2.3, Section 4.2 and Section 6.2 within the relevant period designated in this Agreement (“Reconciliation Dispute”), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert (the “Expert”) in the particular area of disagreement mutually acceptable to both parties. The Expert shall be a partner or principal in a nationally recognized accounting or law firm, and unless the Corporate Taxpayer and Agent or the relevant TRA Holder agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporate Taxpayer or Agent or the relevant TRA Holder, as applicable, or other actual or potential conflict of interest. If the parties are unable to agree on an Expert within fifteen (15) calendar days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, the Expert shall be appointed by the International Chamber of Commerce Centre for Expertise. The Expert shall resolve any matter relating to the Exchange Basis Schedule or an amendment thereto or the Early Termination Schedule or an amendment thereto within thirty (30) calendar days and shall resolve any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen (15) calendar days or as soon thereafter as is reasonably practicable, in each case after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, the undisputed amount shall be

paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporate Taxpayer, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by the Corporate Taxpayer except as provided in the next sentence. The Corporate Taxpayer and Agent or the relevant TRA Holder, as applicable, shall bear their own costs and expenses of such proceeding, unless (i) the Expert adopts Agent's or the relevant TRA Holder's, as applicable, position, in which case the Corporate Taxpayer shall reimburse Agent or the relevant TRA Holder, as applicable, for any reasonable out-of-pocket costs and expenses in such proceeding, or (ii) the Expert adopts the Corporate Taxpayer's position, in which case Agent or the relevant TRA Holder, as applicable, shall reimburse the Corporate Taxpayer for any reasonable out-of-pocket costs and expenses in such proceeding. Any dispute as to whether a dispute is a Reconciliation Dispute within the meaning of this Section 7.9 shall be decided by the Expert. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.9 shall be binding on the Corporate Taxpayer and its Subsidiaries and Agent or the relevant TRA Holder, as applicable, and may be entered and enforced in any court having jurisdiction.

Section 7.10 Withholding. The Corporate Taxpayer shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as the Corporate Taxpayer is required to deduct and withhold with respect to the making of such payment under the Code or any provision of U.S. federal, state, local or non-U.S. Tax law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by the Corporate Taxpayer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the relevant TRA Holder.

Section 7.11 Admission of the Corporate Taxpayer into a Consolidated Group; Transfers of Corporate Assets.

(a) If the Corporate Taxpayer becomes a member of an affiliated or consolidated group of corporations that files a consolidated income Tax Return pursuant to Sections 1501 *et seq.* of the Code or any corresponding provisions of U.S. state or local law, then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments and other applicable items hereunder shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If any entity that is obligated to make a Tax Benefit Payment or Early Termination Payment hereunder transfers one or more assets to a corporation (or a Person classified as a corporation for U.S. federal income Tax purposes) with which such entity does not file a consolidated Tax Return pursuant to Section 1501 of the Code, such entity, for purposes of calculating the amount of any Tax Benefit Payment or Early Termination Payment (e.g., calculating the gross income of the entity and determining the Realized Tax Benefit of such entity) due hereunder, shall be treated as having disposed of such asset in a fully taxable transaction on the date of such contribution. The consideration deemed to be received by such entity shall be equal to the fair market value of the contributed asset, plus (i) the amount of debt to which such asset is subject, in the case of a contribution of an encumbered asset or (ii) the amount of debt allocated to such asset, in the case of a contribution of a partnership interest. For purposes of this Section 7.11(b), a transfer of a partnership interest shall be treated as a transfer of the transferring partner's share of each of the assets and liabilities of that partnership.

Section 7.12 Confidentiality.

(a) Agent and each of its assignees and each TRA Holder and each of its assignees acknowledges and agrees that the information of the Corporate Taxpayer is confidential and, except in the course of performing any duties as necessary for the Corporate Taxpayer and its Affiliates, as required by law or legal process or to enforce the terms of this Agreement, such person shall keep and retain in the strictest confidence and not disclose to any Person any confidential matters, acquired pursuant to this Agreement, of the Corporate Taxpayer and its Affiliates and successors, concerning Spark HoldCo and its Affiliates and successors or the TRA Holders, learned by Agent or TRA Holder heretofore or hereafter. This Section 7.12 shall not apply to (i) any information that has been made publicly available by the Corporate Taxpayer or any of its Affiliates, becomes public knowledge (except as a result of an act of Agent or a TRA Holder in violation of this Agreement) or is generally known to the business community and (ii) the disclosure of information to the extent necessary for a TRA Holder to prepare and file its Tax Returns, to respond to any inquiries regarding the same from any Taxing Authority or to prosecute or defend any action, proceeding or audit by any Taxing Authority with respect to such returns. Notwithstanding anything to the contrary herein, Agent and each of its assignees (and each employee, representative or other agent of Agent or its assignees, as applicable) and each TRA Holder and each of its assignees (and each employee, representative or other agent of such TRA Holder or its assignees, as applicable) may disclose to any and all Persons, without limitation of any kind, the Tax treatment and Tax structure of the Corporate Taxpayer, Spark HoldCo, Agent, the TRA Holders and their Affiliates, and any of their transactions, and all materials of any kind (including opinions or other Tax analyses) that are provided to Agent or the TRA Holder relating to such Tax treatment and Tax structure.

(b) If Agent or an assignee or a TRA Holder or an assignee commits a breach, or threatens to commit a breach, of any of the provisions of this Section 7.12, the Corporate Taxpayer shall have the right and remedy to have the provisions of this Section 7.12 specifically enforced by injunctive relief or otherwise by any court of competent jurisdiction without the need to post any bond or other security, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Corporate Taxpayer or any of its Subsidiaries or the TRA Holders and the accounts and funds managed by the Corporate Taxpayer and that money damages alone shall not provide an adequate remedy to such Persons. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

IN WITNESS WHEREOF, the Corporate Taxpayer, Spark HoldCo, the Members, and Agent have duly executed this Agreement as of the date first written above.

CORPORATE TAXPAYER:

SPARK ENERGY, INC.

By: _____
Name: Nathan Kroeker
Title: President and Chief Executive Officer

SPARK HOLDCO:

SPARK HOLDCO, LLC

By: _____
Name: Nathan Kroeker
Title: President and Chief Executive Officer

AGENT:

Name: W. Keith Maxwell III

[The signatures of the Members are attached in Schedule A.]

SCHEDULE A

THE MEMBERS OF SPARK HOLDCO, LLC PARTY TO TAX RECEIVABLE AGREEMENT

Member

Signature

NuDevco Retail Holdings, LLC

NUDEVCO RETAIL HOLDINGS, LLC

By: _____

Name:

Title:

NuDevco Retail, LLC

NUDEVCO RETAIL, LLC

By: _____

Name:

Title:

SCHEDULE B

ILLUSTRATION OF TRA COVERAGE RATIO AND DEFERRAL CALCULATIONS

(dollar amounts in millions)

Assumptions for Purposes of Illustrative Calculations:	
Corporate Taxpayer Interest in Spark HoldCo	21.82%
Target Distribution	\$ 4.4
Grossed-Up Target Distribution	\$ 20.0
Assumed Tax Liability of Corporate Taxpayer	\$ 2.2
Grossed-Up Tax Distribution	\$ 10.0
Expected Tax Benefit Payment Due	\$ 1.1
Grossed-Up TRA-Related Distribution (Pre-Deferral Calculation)	\$ 5.0
Minimum TRA Coverage Ratio	130%

	Scenarios:		
	(A) No Deferral of	(B) Deferral of	(C) Partial
	TRA Payment	Entire TRA Payment	Deferral TRA Payment
Calculation of TRA Coverage Ratio			
Hypothetical Cash Available for Distribution	\$ 50.0	\$ 32.5	\$ 42.5
Total Distributions (Pre-Deferral)			
(i) Grossed-Up Target Distribution	\$ 20.0	\$ 20.0	\$ 20.0
(ii) Grossed-Up Tax Distribution	\$ 10.0	\$ 10.0	\$ 10.0
(iii) Grossed-Up TRA-Related Distribution (Pre-Deferral Calculation)	\$ 5.0	\$ 5.0	\$ 5.0
Total Distributions (Pre-Deferral)	\$ 35.0	\$ 35.0	\$ 35.0
TRA Coverage Ratio (Pre-Deferral)	143%	93%	121%
Deferral of TRA-Related Distribution	\$ —	\$ 5.0	\$ 2.3
Total Distributions (Post-Deferral)			
(i) Grossed-Up Target Distribution	\$ 20.0	\$ 20.0	\$ 20.0
(ii) Grossed-Up Tax Distribution	\$ 10.0	\$ 10.0	\$ 10.0
(iii) Grossed-Up TRA-Related Distribution (Post-Deferral Calculation)	\$ 5.0	\$ —	\$ 2.7
Total Distributions (Post-Deferral)	\$ 35.0	\$ 30.0	\$ 32.7
TRA Coverage Ratio (Post-Deferral)	143%	108%	130%
Calculation of Deferred TRA Amount			
Deferral of TRA-Related Distribution	\$ —	\$ 5.0	\$ 2.3
Corporate Taxpayer Interest in Spark HoldCo	21.82%	21.82%	21.82%
Addition to Deferred TRA Amount	\$ —	\$ 1.10	\$ 0.51
Amount of Tax Benefit Payment Due Currently	\$ 1.10	\$ —	\$ 0.59

CREDIT AGREEMENT

among

**SPARK ENERGY, INC.,
as Parent,**

**SPARK HOLDCO, LLC,
SPARK ENERGY, LLC,**

and

**SPARK ENERGY GAS, LLC,
as Co-Borrowers,**

**SOCIÉTÉ GÉNÉRALE,
as Administrative Agent, an Issuing Bank and a Bank,**

and

**SG AMERICAS SECURITIES, LLC,
as Sole Lead Arranger and Sole Bookrunner,**

**NATIXIS, NEW YORK BRANCH,
COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,
“RABOBANK NEDERLAND,” NEW YORK BRANCH, AND
RB INTERNATIONAL FINANCE (USA) LLC,
as Co-Documentation Agents,**

**COMPASS BANK,
as Senior Managing Agent,**

and

**THE OTHER FINANCIAL INSTITUTIONS PARTY
HERETO FROM TIME TO TIME**

Dated as of August 1, 2014

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this “ Agreement ”) is dated as of August 1, 2014, among **SPARK HOLDCO, LLC** (“ HoldCo ”), a Delaware limited liability company, **SPARK ENERGY, LLC** (“ Spark ”), a Texas limited liability company, and **SPARK ENERGY GAS, LLC** (“ SEG ”), a Texas limited liability company (jointly, severally and together, the “ Co-Borrowers ,” and each individually, a “ Co-Borrower ”), **SPARK ENERGY, INC.** (“ Parent ”), a Delaware corporation, **SOCIÉTÉ GÉNÉRALE** , as Agent, Issuing Bank and a Bank, **SG AMERICAS SECURITIES, LLC** , as Sole Lead Arranger and Sole Bookrunner, and each other financial institution which may become a party hereto (collectively, the “ Banks ”).

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

ARTICLE 1 DEFINITIONS

1.01 Certain Defined Terms . The following terms have the following meanings:

“ Account ” has the meaning stated in the New York Uniform Commercial Code.

“ Advance Maturity Date ” means the maturity date of each Working Capital Loan made under the Working Capital Line which will be the earliest to occur of (a)(i) 365 days from the date of Borrowing or (ii) the date of the L/C Borrowing, if an advance under a Letter of Credit; or (b) the Expiration Date. All advances made under the Working Capital Line after the Expiration Date because of a drawing under a Letter of Credit shall be due and payable on the day such advance is made and, in order to pay such amounts, Agent shall apply any Cash Collateral held by it as security for such Letters of Credit in payment of same.

“ Advance Sub-limit Cap ” means at any time, the maximum amount which may be advanced by the Banks to the Co-Borrowers under the Working Capital Line, as determined by the Collateral Position Report, which amount shall, in no event, exceed \$45,000,000.00 in the aggregate, subject to the following Advance Sub-limit Caps:

(a) For the purchase of Product and other uses permitted under Section 7.07	\$45,000,000.00
(b) For Contango Transactions	\$45,000,000.00

If Commitments are increased pursuant to Section 2.02 , the foregoing Advance Sub-limit Caps shall be increased pro-rata based on the amount of any increase in the Commitments under Section 2.02 in excess of \$70,000,000 in the aggregate, but shall not exceed \$70,000,000. Such increases in the Advance Sub-limit Cap and the Commitments to be notified to the Co-Borrowers and the Banks pursuant to Section 2.02 (c) .

“ Affiliate ” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract, or otherwise.

“ Affiliate Obligation ” means indebtedness owing by an Affiliate of a Loan Party (which is not a Loan Party itself) to a Loan Party, *provided* that a first priority security interest has been granted by such Loan Party to Agent in the amounts owed by the Affiliate in a manner satisfactory to Agent.

“ Agent ” means Société Générale in its capacity as administrative agent for the Banks hereunder, and any successor agent arising under Section 9.09 .

“ Agent Parties ” has the meaning specified in Subsection 10.02(f) .

“ Agent-Related Persons ” means Société Générale and any successor agent arising under Section 9.09 , together with their respective Affiliates and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“ Agent’s Payment Office ” means the address for payments set forth on Schedule 10.02 hereto in relation to Agent, or such other address as Agent may from time to time specify.

“ Aggregate Amount ” means the Effective Amount of all outstanding Working Capital Loans plus the Effective Amount of all outstanding L/C Obligations.

“ Agreement ” means this Credit Agreement.

“ Anti-Terrorism Law ” means any law relating to terrorism or money laundering, including, without limitation, the Patriot Act.

“ Applicable Margin ” means, with respect to Working Capital Loans, the following percentages per annum:

(a) if the average daily Aggregate Amount during the most recently ended fiscal quarter was less than fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, (i) two and three-quarters percent (2.75%) for Eurodollar Rate Loans, (ii) two and one-quarter percent (2.25%) for COF Rate Loans and (iii) one and three-quarters percent (1.75%) for ABR Loans; and

(b) if the average daily Aggregate Amount during the most recently ended fiscal quarter was greater than or equal to fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, (i) three percent (3.00%) for Eurodollar Rate Loans, (ii) two and one-half percent (2.50%) for COF Rate Loans and (iii) two percent (2.00%) for ABR Loans.

The Applicable Margin for any fiscal quarter shall be determined by the Agent based upon the average Aggregate Amount outstanding and the average aggregate Commitments of the Banks in effect, in each case, on each day during the fiscal quarter most recently ended, and any such determination shall be conclusive and binding absent manifest error. Any increase

or decrease in the Applicable Margin resulting from a change in the average daily Aggregate Amount or aggregate Commitments of the Banks during any fiscal quarter shall become effective as of the first day of the subsequent fiscal quarter, as notified by the Agent to the Co-Borrowers. Notwithstanding the foregoing, the Applicable Margin shall be deemed to be the Applicable Margin described in clause (a) above from and after the Closing Date through and including the last day of the first full fiscal quarter ending after the Closing Date.

“Approved Brokerage Accounts” means brokerage accounts maintained by the Co-Borrowers or any of them with an Eligible Broker for the purpose of allowing the Co-Borrowers or any of them to engage in the purchase and sale of commodity futures, commodity options, forward or leverage contracts and/or actual or cash commodities, and subject to a fully perfected first priority security interest in favor of the Agent, for its benefit and the benefit of the Banks (including a tri-party control agreement, acceptable to the Agent).

“Approved Location” means a terminal, storage facility or pipeline approved by the Agent with respect to which the Agent may request a bailee letter in form and substance acceptable to Agent with respect to any Collateral stored at such terminal, facility or pipeline.

“Assignment and Assumption” has the meaning specified in Subsection 10.08(a).

“Attorney Costs” means and includes all fees and disbursements of any law firm or other external counsel, the allocated cost of internal legal services and all disbursements of internal counsel.

“Availability Period” means the period from and including the Closing Date to the earliest of (a) the Expiration Date, (b) the date of termination of all Commitments pursuant to Section 2.08, and (c) the date of termination of the commitment of each Bank to make Working Capital Loans and of the obligation of the Issuing Bank to Issue Letters of Credit pursuant to Section 8.02.

“Bank Blocked Accounts” means the Spark Bank Blocked Account, the SEG Bank Blocked Account, and the Wells Fargo Bank Blocked Account.

“Banks” means Société Générale and each other financial institution that is or may become a party to this Agreement. References to the “Banks” shall include each Issuing Bank; for purposes of clarification only, to the extent that any Issuing Bank may have any rights or obligations in addition to those of the Banks due to its status as an Issuing Bank, its status as such will be specifically referenced.

“Bankruptcy Code” means the Federal Bankruptcy Reform Act of 1978, as amended (11 U.S.C. § 101, et seq.).

“Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus $\frac{1}{2}$ of 1% and (c) the Eurodollar Rate for a one month maturity on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.0%; *provided* that, for the avoidance of doubt, for purposes of calculating the “Base Rate”, (x) “Prime Rate” shall mean, for any day, a rate per annum that is equal to the corporate base rate of interest established by the

Agent prior to the delivery of the relevant borrowing notice (the Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually available) and (y) the Eurodollar Rate for any day shall be based on the rate appearing on Reuters Screen LIBOR 01 Page (or on any successor or substitute page of such page as determined by the Agent) at approximately 11:00 a.m. London time on such day. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Eurodollar Rate, respectively.

“Base Rate Loan” means any Loan bearing interest based upon the Base Rate.

“Benefit Plan” means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Loan Party incurs or otherwise has any obligation or liability, contingent or otherwise.

“Blocked Account Agreements” means the deposit account control agreements, three party agreements, and other similar agreements listed on the Security Schedule.

“Borrower Materials” has the meaning specified in Subsection 10.02(e).

“Borrowing” means a borrowing hereunder consisting of a Working Capital Loan made to one or more of the Co-Borrowers by the Banks under Article II or continuation or conversion of loans consisting of simultaneous Working Capital Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by the Banks pursuant to Section 2.01.

“Borrowing Base Advance Cap” means at any time an amount equal to the least of:

(a) the aggregate Commitments of the Banks at such time; or

(b) the sum of:

(i) 100% of the amount of Cash Collateral and other liquid investments of the Co-Borrowers which are acceptable to the Agent in its sole discretion and which are subject to a first perfected security interest in favor of the Agent, for its benefit and the benefit of the Banks, and which have not been used in determining availability for any other advance or Letter of Credit Issuance; **plus**

(ii) 90% of equity (net liquidity value) in Approved Brokerage Accounts; **plus**

(iii) 90% of the amount of Tier I Accounts, net of deductions, offsets and counterclaims; **plus**

(iv) 85% of the amount of Tier II Accounts, net of deductions, offset and counterclaims; **plus**

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- (v) 85% of the amount of Tier I Unbilled Qualified Accounts, net of deductions, offset and counterclaims; **plus**
 - (vi) 80% of the amount of Tier II Unbilled Qualified Accounts, net of deductions, offset and counterclaims; **plus**
 - (vii) 80% of the amount of Eligible Inventory; **plus**
 - (viii) 85% of the amount of Hedged Eligible Inventory; **plus**
 - (ix) 80% of the amount of net Eligible Exchange Receivables; **plus**
 - (x) 80% of the amount of Letters of Credit for Product Not Yet Delivered; **plus**
 - (xi) 60% of In-the-Money Positions from counterparties due to any Co-Borrower with tenors up to twelve (12) months; **less**
 - (xii) the amounts (including disputed items) which would be subject to a so-called "First Purchaser Lien" as defined in Texas Bus. & Com. Code Section 9.343, comparable laws of the states of Oklahoma, Kansas, Wyoming or New Mexico, or any other comparable law, except to the extent a Letter of Credit secures payment of amounts subject to such First Purchaser Liens; **less**
 - (xiii) 115% of the amount of any mark to market exposure to the Swap Banks under Swap Contracts other than Swap Contracts involving physical delivery as reported by the Swap Banks, reduced by cash collateral held by a Swap Bank; **less**
 - (xiv) with respect to Swap Contracts involving physical delivery, 115% of the amount of mark to market exposure to the Swap Banks under such Swap Contracts until nomination for delivery has been made and 115% of the amount of notional exposure to the Swap Banks under such Swap Contracts after such nomination for delivery has been made, in each case, reduced by cash collateral held by a Swap Bank; **less**
 - (xv) Reserves; **less**
 - (xvi) sales Taxes;

provided that, (x) in no event shall the amounts described in (b)(xi) above be in excess of the lesser of (1) \$40,000,000.00 and (2) forty percent (40%) of the sum of the items in subsections (b)(i) through (b)(xvi) above, in the aggregate, be counted when making the calculation under subsection (b) of this definition; (y) in no event shall any amounts described in (b)(i) through (b)(xvi) above which may fall into more than one of such categories be counted more than once when making the calculation under subsection (b) of this definition; and (z) in the event the amounts described in (b)(iii), (iv), (v), (vi), (ix) and (xi) in the aggregate for any counterparty exceed the amounts set forth on the Credit Limits Annex or the amount approved for other counterparties not listed on the Credit Limits Annex (including, without limitation the amounts set forth on Annex C), such excess amounts may not be included in the Borrowing Base Advance Cap unless approved by the Majority Banks.

“Borrowing Date” means any date on which a Borrowing occurs under Section 2.04.

“Building” means any “building” or “manufactured (mobile) home” (in each case, as such terms are defined for purposes of the National Flood Insurance Program).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by the Co-Borrowers with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which dealings in dollar deposits are carried out in the London interbank market.

“Capital Lease” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Capital Lease Obligation” means, with respect to any Person and a Capital Lease, the amount of the obligation of such Person as the lessee under such Capital Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Person as of the date of any determination thereof.

“Cash Collateral” means currency issued by the United States and Marketable Securities which have been Cash Collateralized for the benefit of the Secured Parties.

“Cash Collateralize” means to pledge and deposit with or deliver to the Agent, for the benefit of the Secured Parties, Cash Collateral as collateral for the Obligations pursuant to documentation in form and substance satisfactory to the Agent. The Co-Borrowers hereby grant the Agent, for the benefit of the Secured Parties, a security interest in all Cash Collateral and deposit account balances.

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

“Close-Out Amount” shall have the meaning ascribed to it in the Intercreditor Agreement.

“Closing Date” means the date on which all conditions precedent set forth in Section 5.02 are satisfied or waived by the Banks.

“Co-Borrowers” means, together, HoldCo, Spark, and SEG. Any of the individual Co-Borrowers may be generically referred to as “Co-Borrower”.

“Code” means the Internal Revenue Code of 1986, and regulations promulgated thereunder.

“COF Rate” means the rate per annum quoted by Agent in New York City to the Co-Borrowers at or about the time of the making of any Loan as the cost of funds of the Agent (as determined by the Agent in its reasonable discretion which determination may include, without limitation, market, regulatory and liquidity conditions), provided that such rate is not necessarily the cost to the Banks of funding the specific Loan, and may exceed the Agent’s actual cost of borrowing in the interbank market or other markets in which the Agent may obtain funds from time to time for amounts similar to the amount of the Loan but such rate shall not exceed the rate utilized (quoted) for other similar customers of Agent utilizing such rate for loans at or about the time of the making of any Loan.

“COF Rate Loan” means any Loan bearing interest based upon the COF Rate.

“Collateral” means all assets of the Loan Parties including, without limitation, all accounts, equipment, chattel paper, inventory, Product in transit, the Bank Blocked Accounts, instruments, investment property, contract rights, general intangibles, fixed assets, and real estate, whether presently existing or hereafter acquired or created and the proceeds thereof, excluding the POR Collateral but only to the extent the applicable POR Agreement requires the release of Agent’s lien in such POR Collateral.

“Collateral Position” means Collateral of the Loan Parties available to support a Credit Extension under the Working Capital Line, as determined in the Collateral Position Report.

“Collateral Position Report” means the Collateral Position Report substantially in the form attached hereto as Exhibit D, which Collateral Position Report sets forth all of the Loan Parties’ eligible assets, including, without limitation, all unrealized gains, a description of all offsets, counterclaims or deductions by counterparty and mark-to-market exposure by counterparty, including counterparty details, in sufficient detail and in form satisfactory to Agent.

“Commitment” means, as to each Bank, its obligation to (a) make Loans pursuant to Section 2.01, and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth as its “Commitment” opposite such Bank’s name on Schedule 2.01 (subject to increase as provided in Section 2.02) or in the Assignment and Assumption pursuant to which such Bank becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Commitment Increase Agreement” means a Commitment Increase Agreement, substantially in the form of Exhibit G, among the Co-Borrowers, the Agent and a Bank, pursuant to which such Bank agrees to increase its Commitment as described in Section 2.02 of this Agreement.

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

“Compliance Certificate” means a certificate, in the form attached hereto as Exhibit E, or any other form acceptable to the Agent.

“Consolidated” refers to the consolidation of any Person, in accordance with GAAP, with its properly Consolidated Subsidiaries. References herein to a Person’s Consolidated financial statements, financial position, financial condition, liabilities, etc., refer to the Consolidated financial statements, financial position, financial condition, liabilities, etc., of such Person and its properly Consolidated Subsidiaries.

“Contango Loan” means any Working Capital Loan hereunder requested for the purpose of financing a Contango Transaction.

“Contango Transaction” means the purchase by SEG of natural gas for physical storage at an Approved Location which qualifies as Hedged Eligible Inventory or, when sold, will generate a Qualified Account.

“Controlling Percentage” means, with respect to any Person, the percentage of the outstanding voting Equity Interests (including any options, warrants or similar rights to purchase such Equity Interests) of such Person having ordinary voting power which gives the direct or indirect holder of such Equity Interests the power to elect a majority of the board of directors (or other applicable governing body), or directors holding a majority of the votes of the board of directors (or other applicable governing body) of such Person.

“Conversion/Continuation Date” means any date on which, under Section 2.05, the Co-Borrowers (a) convert Loans of one Type to another Type, or (b) continue such Loans as Loans of the same Type, but with a new Interest Period.

“Credit Extension” means and includes (a) the making of any Loans hereunder, and (b) the Issuance of any Letters of Credit hereunder.

“Credit Limits Annex” means Annex B to this Agreement, as the same may be modified from time to time as mutually agreed to in writing by the Co-Borrowers and the Agent, which may be effectuated without the necessity of amending this Agreement. The Credit Limits Annex shall be re-determined based on factors such as Product prices and other factors determined by the Co-Borrowers and the Agent on a reasonable basis and in good faith on a semi-annual basis as of July 15 and January 15 of each year and effective five (5) days after the date of re-determination. In addition to the scheduled redeterminations set forth above, each of the Agent and/or the Co-Borrowers shall have the right to request two additional re-determinations of the Credit Limits Annex per year.

“Credit Policy” means the credit risk management policy of the Co-Borrowers, as such policy may be amended from time to time pursuant to Section 7.27.

“Cure Contribution” means an equity contribution by NuDevco Holdings, NuDevco Retail or the holder of an Equity Interest in Parent permitted by the applicable organizational documents of Parent or the incurrence of Subordinated Debt permitted by Section 7.13(c), in each case, for purpose of curing a Default or Event of Default which, without such contribution, would occur as a result of a failure to comply with Section 7.09(a), (b) or (c).

“Cure Period” has the meaning specified in Subsection 7.09(d).

“Default” means any event or circumstance which, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

“Default Period” means with respect to any Bank, the period during which such Bank is a Defaulting Bank.

“Default Rate” has the meaning specified in Section 2.10(a).

“Defaulting Bank” means any Bank, as reasonably determined by the Agent or the Issuing Banks, that has (a) failed to fund any portion of Loans or participations in any Letter of Credit within two (2) Business Days of the date required to be funded by it hereunder, unless such Bank notifies the Agent and the Co-Borrowers in writing that such failure is the result of such Bank’s reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing), (b) notified the Co-Borrowers, the Agent, any Issuing Bank or any Bank in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under any other agreement in which it commits to extend credit (unless such writing or public statement relates to such Bank’s obligation to fund a Loan hereunder and states that such position is based on such Bank’s reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) failed, within two (2) Business Days after a request by the Agent or an Issuing Bank to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit, (d) otherwise failed to pay over to the Agent, any Issuing Bank or any other Bank any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, or (e) become or is insolvent or has a parent company that has become or is insolvent or become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or has taken any action in furtherance of, or has indicated its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or has indicated its consent to, approval of or acquiescence in any such proceeding or appointment. With respect to any Bank that is a “Defaulting Bank” pursuant to clauses (a), (c) or (d) above, upon (i) such “Defaulting Bank” paying all amounts owed to the applicable Bank(s), Issuing Banks or the Agent pursuant to the terms hereof, as reasonably determined by such Bank(s), Issuing Banks, and the Agent, as applicable, and (ii) the approval of the Co-Borrowers, Issuing Banks, and Agent, such “Defaulting Bank” shall cease to be a “Defaulting Bank”.

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

“Documentary Letter of Credit” means a Letter of Credit which is intended at the time of Issuance to be drawn upon and excludes Standby Letters of Credit.

“Dollars,” “dollars” and “\$” each mean lawful money of the United States.

“Effective Amount” means (i) with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Loans occurring on such date; and (ii) with respect to any outstanding L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any Issuances of Letters of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including changes as a result of expiration or cancellation, any reimbursements of outstanding unpaid drawings under any Letters of Credit and any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Eligible Accounts” means, at the time of any determination thereof, each Co-Borrower’s Accounts as to which the following requirements have been fulfilled to the satisfaction of the Agent (unless otherwise indicated):

(a) Such Account either (i) is the result of a sale to an account debtor who has been pre-approved for such purpose by the Majority Banks in writing, in their sole discretion, or (ii) is secured by letters of credit in form acceptable to the Agent in its sole discretion and issued by banks approved by the Agent in its sole discretion, or (iii) is within the credit limits set forth on the Credit Limits Annex;

(b) The applicable Co-Borrower has lawful and absolute title to such Account;

(c) Such Account is a valid, legally enforceable obligation of the Person who is obligated under such Account (1) for Products actually delivered to such account debtor or (2) for services rendered for such account debtor, in each case in (1) and (2) above in the ordinary course of the applicable Co-Borrower’s business;

(d) Such Account shall have excluded therefrom any portion that is subject to any dispute, offset, counterclaim or other claim or defense on the part of the account debtor or to any claim on the part of the account debtor denying liability under such Account;

(e) Such Account is not evidenced by any chattel paper, promissory note or other instrument;

(f) Such Account is subject to a fully perfected first priority security interest (or properly filed and acknowledged assignment, in the case of U.S. government contracts, if any) in favor of the Agent for the benefit of the Secured Parties pursuant to the Loan Documents, prior to the rights of, and enforceable as such against, any other Person, and such Account is not subject to any security interest or Lien in favor of any Person other than the Liens of the Agent for the benefit of the Secured Parties pursuant to the Loan Documents;

(g) Such Account shall have excluded any portion which is not payable in Dollars in the U.S. and/or any portion with respect to which a currency valuation or conversion risk rests with Co-Borrowers;

(h) Such Account has been due and payable for thirty (30) days or less from the date of the invoice and no extension or indulgence has been granted extending the due date beyond a 30-day period, except (i) if such Account is owing from an account debtor who pays via automated clearinghouse (ACH) transactions, then the number 35 shall be substituted for the number 30 in the foregoing, (ii) if such Account is from federal, state, county or municipal account debtors under government contracts, then the number 45 shall be substituted for the number 30 in the foregoing and (iii) if the Co-Borrowers have purchased credit insurance on such Account, which such insurance names Agent as co-beneficiary and is acceptable in form and substance to Agent, then the number 90 shall be substituted for the number 30 in the foregoing;

(i) No account debtor in respect of such Account is (i) an Affiliate of either Co-Borrower, or (ii) incorporated in or primarily conducting business in any jurisdiction outside of the U.S., unless such account debtor and the account is approved in writing by the Banks;

(j) The applicable Co-Borrower shall have notified the account debtor (pursuant to the contract under which such Account arises or by separate notice) of the assignment of the Account to the Banks and shall have given irrevocable instructions to pay proceeds of the Account to the Agent on behalf of the Banks without offset or counterclaim, and the account debtor shall have acknowledged and agreed to such assignment. In the alternative, the Agent and the applicable Co-Borrower shall have notified the account debtor of the assignment and give irrevocable instructions to the account debtor to pay proceeds as directed by the Agent on behalf of the Banks; and

(k) Such Account meets and complies with the Credit Policy; provided that, if any credit limits for any account debtor in the Credit Policy are less than the credit limit set forth for such account debtor on Annex C, the Accounts for such account debtor shall be deemed to be in compliance with the credit limits set forth in the Credit Policy for purposes of this clause (l) to the extent such Accounts are within the credit limit for such account debtor set forth on Annex C.

Eligible Accounts shall exclude any portion of such Accounts relating to (i) Transmission and Distribution Service Provider (“TDSP”) charges billed to ERCOT customers to the extent that such TDSP charges owed to the TDSP have not been paid by Co-Borrowers prior to the creation of the Account from such ERCOT customers and (ii) purchase of receivables fees and related sales Taxes to the extent that such fees and related sales Taxes applicable to purchase of receivables markets have not already been taken into consideration in calculating the amount owed from the particular local distribution company and such net-amounts are reflected on Co-Borrowers books and records.

For purposes of applying the above requirements for determining an Eligible Account, if the Co-Borrowers request the approval of the Banks to treat an Account as an Eligible Account, the Banks shall have five (5) Business Days after receipt of such request (and all relevant supporting information) to respond thereto (but not necessarily make a decision with

respect to eligibility). If a Bank does not respond to Agent within such five (5) Business Days period, such Bank shall be deemed to have approved the treatment of the Account as an Eligible Account. Notwithstanding the foregoing, the Banks shall be deemed to have approved the Accounts resulting from the sale to the account debtors listed on Annex C, up to the amounts set forth on Annex C for each such Account Debtor.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.08 (subject to such consents, if any, as may be required under Section 10.08(a)).

“Eligible Broker” means, with respect to hedging accounts and transactions, Newedge USA, LLC and any other broker reasonably acceptable to the Agent.

“Eligible Exchange Receivables” means all enforceable rights of any Co-Borrower to receive natural gas in exchange for the sale or trade of natural gas previously delivered to the exchange debtor by such Co-Borrower which, in each case, (a) are evidenced by a written agreement enforceable against the exchange debtor thereof, (b) are current pursuant to the terms of the contract or invoice, (c) are subject to a perfected, first Lien for the benefit of the Secured Parties subject only to Permitted Liens, and no other Lien, charge, offset or claim, (d) are not the subject of a dispute between the exchange debtor and such Co-Borrower, (e) are valued at Platt’s spot market price or another independent posting acceptable to the Agent in its sole discretion, (f) are evidenced by contracts with exchangers pre-approved by the Agent in writing in its sole discretion, or contracts secured by letters of credit in form acceptable to the Agent in its sole discretion and issued by banks approved by the Agent in its sole discretion, (g) have not been otherwise determined by the Agent in its sole discretion to be unacceptable to it.

“Eligible Inventory” means, at the time of determination thereof, each Co-Borrower’s inventory consisting of natural gas, valued at current market (as referenced by a published source acceptable to the Banks in their sole discretion) net of any setoff, counterclaim or netting, as to which the following requirements have been fulfilled to the satisfaction of the Agent:

(a) The inventory is owned by such Co-Borrower, free and clear of all Liens in favor of third parties, except Liens in favor of the Banks under the Loan Documents and except for Permitted Liens;

(b) The inventory has not been identified to deliveries with the result that a buyer would have rights to the inventory that would be superior to the Banks’ security interest, nor shall such inventory have become the subject of a customer’s ownership or Lien;

(c) The inventory is in transit in the U.S. or a bill of lading has been issued or endorsed to the Agent if such inventory is in the hands of a third party carrier, or is located at a storage facility or at the owned sites, or leased premises, at the locations described on Schedule 7.18, or at such other place as has been specifically agreed to in writing by the Agent and the applicable Co-Borrower; and

(d) The inventory is subject to a fully perfected first priority security interest in favor of the Agent for the benefit of the Secured Parties pursuant to the Loan Documents.

Such Eligible Inventory shall not include “virtual storage”, “winter bundled sales” and future purchase commitments made during bid week.

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

“Equity Investment” means the purchase or other acquisition by a Loan Party of any Equity Interest in another Person engaged in a line of business similar or complimentary to the lines of business carried on by the Loan Parties or in other business activities in the energy business related to such lines of business.

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

“ERISA Affiliate” means, collectively, any Loan Party, and any Person under common control, or treated as a single employer, with any Loan Party, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ERISA Event” means any of the following: (a) a reportable event described in Section 4043 of ERISA (other than those events with respect to which the 30-day notice requirement has been duly waived under the applicable regulations) with respect to a Title IV Plan, (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (c) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan, (d) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA, (e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041(c) of ERISA, (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due, (h) the imposition of a lien under Section 430 of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate, and (i) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for a distress or involuntary termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of any liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent.

“Eurocurrency Liabilities” has the meaning specified in Section 4.06.

“Eurodollar Rate” means for any Interest Period with respect to any Eurodollar Rate Loan, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on Reuters Reference LIBOR 01 (or otherwise on such screen) at approximately, with respect to any Notice of Borrowing or Notice of Conversion/Continuation (as applicable), 11:00 am (London time) two (2) Business Days prior to the first day of such Interest Period. In the event that such rate does not appear or shall cease to be available from Reuters Reference LIBOR 01, then the Eurodollar Rate shall be determined from such financial reporting service or other information as shall be mutually acceptable to Agent and the Co-Borrowers that reflects an average ICE Benchmark Administration (or the successor thereto if the ICE Benchmark Administration is no longer making a Eurodollar Rate available) Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on the Eurodollar Rate.

“Event of Default” means any of the events or circumstances specified in Section 8.01.

“Excluded Swap Obligation” means, with respect to any Loan Party, any CEA Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such CEA Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Loan Party or the grant of such security interest becomes effective with respect to such CEA Swap Obligation. If a CEA Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such CEA Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, state gross receipts Taxes imposed in lieu of net income or franchise Taxes, and branch profits Taxes, in each case, imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Bank, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), (b) in the case of a Bank, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Bank with respect to an applicable interest in a Loan or Commitment pursuant to a Requirement of Law in effect on the date on which (i) such Bank acquires such interest in the Loan or Commitment or (ii) such Bank changes its lending office, except in each case to the extent that,

pursuant to Section 4.01 amounts with respect to such Taxes were payable either to such Bank's assignor immediately before such Bank became a party hereto or to such Bank immediately before it changed its lending office, (c) Taxes attributable to a Foreign Bank's failure to comply with Section 9.10(b) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means that certain Seventh Amended and Restated Credit Agreement dated as of July 31, 2013, among Ventures, Spark Energy Holdings, LLC, Spark, SEG, Associated Energy Services, LP, a Texas limited partnership, Société Générale, as agent, issuing bank and a bank, and each other financial institution party thereto.

"Existing Letters of Credit" means all Letters of Credit issued for the account of Spark and SEG which are outstanding as of the date hereof under the Existing Credit Agreement and listed on Schedule 1.01.

"Expiration Date" means August 1, 2016.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation on, rules or practices adopted pursuant to such intergovernmental agreement.

"FDIC" means the Federal Deposit Insurance Corporation, and any Governmental Authority succeeding to any of its principal functions.

"Federal Funds Rate" means, for any day, the rate set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Federal Reserve Bank of New York (including any such successor, "H.15(519)" on the preceding Business Day opposite the caption "Federal Funds (Effective)"; or, if for any relevant day such rate is not so published on any such preceding Business Day, the rate for such day will be the arithmetic mean as determined by the Agent of the rates for the last transaction in overnight Federal Funds arranged prior to 9:00 a.m. (New York City time) on that day by each of three leading brokers of Federal Funds transactions in New York City selected by the Agent.

"Foreign Bank" means any Bank that is not a U.S. Person.

"FRB" means the Board of Governors of the Federal Reserve System, and any Governmental Authority succeeding to any of its principal functions.

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Guarantors” means Parent and each Subsidiary of a Loan Party (other than a Co-Borrower) which has executed a Guaranty Agreement.

“Guaranty Agreement” means (i) that certain Guaranty Agreement made by Parent in favor of the Agent for the ratable benefit of the Secured Parties and (ii) any other guaranty agreement executed from time to time by any Person in favor of the Agent in respect of any or all of the Obligations, as each may be amended, restated, supplemented or otherwise modified from time to time.

“Hedged Eligible Inventory” means natural gas owned by a Co-Borrower (a) which has been presold in a manner resulting in, or which at the time of delivery, will result in, a Qualified Account, or (b) which has been hedged by a NYMEX contract or an over-the-counter contract acceptable to Agent, which NYMEX contract is subject to a tri-party account control agreement with Agent and which natural gas, upon such purchase by a Co-Borrower, shall qualify as Eligible Inventory. Such Hedged Eligible Inventory shall be valued at current market (as referenced by a public source acceptable to the Agent in its sole discretion) net of any setoff, counterclaim or netting. Such Hedged Eligible Inventory shall not include “virtual storage” or “winter bundled sales”.

“HoldCo” means Spark HoldCo, LLC, a Delaware limited liability company.

“Honor Date” has the meaning specified in Subsection 3.03(b).

“Increase Effective Date” has the meaning specified in Subsection 2.02(b).

“In-the-Money Positions” means the in-the-money marked-to-market value of forward positions from Co-Borrower’s forward book from (i) any Accounts of the Co-Borrowers which are Eligible Accounts (other than those Accounts which fail to meet the requirements of subparagraph (h) in the definition of “Eligible Accounts,” which Accounts shall be included) and which are attributable to Product which has been contracted to be delivered to an account debtor and (ii) any open financial forward contracts not included in Approved Brokerage accounts, net of, in each case (on a counterparty by counterparty basis) remaining forward out-of-the-money positions, accounts payable and offsets and counterclaims of Co-Borrowers to such counterparty, as such amounts may be adjusted to account for the effective amount of posted cash and Letter of Credit support to such counterparty.

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

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business that are not paid for more than 90 days after the date on which such trade account payable was due, and (ii) obligations that are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by any Co-Borrower);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) Capital Lease Obligations and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all guaranties of such Person in respect of any of the foregoing, but only to the extent that any such guaranty does not guaranty the payment of amounts owed or which may be owed by a Co-Borrower or is not otherwise included as Indebtedness of a Co-Borrower.

For all purposes hereof, the Indebtedness of any Person shall (i) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless, and to the extent that, such Indebtedness is expressly made non-recourse to such Person, and (ii) exclude any loans from an insurance company or an insurance premium finance company to finance all or any portion of the premium on any insurance policy maintained by any Co-Borrower or any of its Subsidiaries, but only to the extent consistent with past practice. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Indebtedness attributable in respect thereof as of such date. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date if the Swap Termination Value shows that the Parent or any of its Consolidated Subsidiaries is the party owing such amount.

“ Indemnified Taxes ” means all Taxes other than Excluded Taxes.

“ Insolvency Proceeding ” means with respect to any Person (a) any case, action or proceeding with respect to such Person before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors,

composition, marshalling of assets for creditors, or other similar arrangements in respect of its creditors generally or any substantial portion of its creditors; undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

“Intercreditor Agreement” means the Intercreditor Agreement dated as of August 1, 2014 among the Banks and the Loan Parties relating to the sharing of Collateral with and among the Swap Banks, as amended from time to time.

“Interest Payment Date” means, (a) as to any Loan other than a Base Rate Loan or COF Rate Loan, the last day of each Interest Period applicable to such Loan except if the Interest Period for such Loan is longer than 90 days, then the 90th day after such Loan is made; and (b) as to any Base Rate Loan or COF Rate Loan, the later of (i) the 5th Business Day of each fiscal quarter, or (ii) the date of payment shown on the billing delivered to the Co-Borrowers by the Agent, but in no event later than the Expiration Date.

“Interest Period” means, as to any Eurodollar Rate Loan, the period commencing on the Borrowing Date of such Loan or on the Conversion/Continuation Date on which the Loan is converted into or continued as a Eurodollar Rate Loan, and ending on the date that is one or two weeks or one, two, three or six months thereafter, as selected by HoldCo in its Notice of Borrowing or Notice of Conversion/Continuation as the ending date thereof; *provided, however*, that:

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

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

(c) no Interest Period shall extend beyond the scheduled Expiration Date.

“Interest Rate Contract” means any agreement entered into with any Swap Bank, whether or not in writing, relating to any single transaction that is an interest rate protection agreement, interest rate future, interest rate option, interest rate swap, interest rate cap, collar or other interest rate hedge arrangement. No Interest Rate Contract will be executed hereunder unless it is subject to the applicable ISDA Master Agreement or its equivalent (i.e., long-form confirmations).

“IPO” means the initial public offering of the Parent’s Class A common stock.

“IPO Restructuring” means (a) the initial formation of Parent, HoldCo and NuDevco Holdings as wholly owned Subsidiaries of Ventures, (b) the conversion of Spark and SEG from Texas limited partnerships to Texas limited liability companies, (c) the distribution by Spark Energy Holdings, LLC of all of its Equity Interests in Spark and SEG to Ventures, (d) the contribution by Ventures of all of its Equity Interests in Parent, HoldCo, Spark, SEG to NuDevco

Holdings in exchange for all Equity Interests issued by NuDevco Holdings, (e) the contribution by NuDevco Holdings of all of its Equity Interests in Spark and SEG to HoldCo in exchange for Equity Interests issued by HoldCo, (f) the initial formation of NuDevco Retail as a wholly owned Subsidiary of NuDevco Holdings, (g) the contribution by NuDevco Holdings of 1% of the Equity Interests issued by HoldCo to NuDevco Retail in exchange for all Equity Interests issued by NuDevco Retail, (h) the transfer by NuDevco Holdings of certain Equity Interests issued by HoldCo with a value of \$50,000 to Parent in exchange for a \$50,000 intercompany promissory note by Parent to NuDevco Holdings, (i) the amendment of the limited liability company agreement of HoldCo to admit Parent as the sole managing member of HoldCo, (j) the issuance of Class B common stock of Parent to HoldCo, (k) the distribution by HoldCo of all such Class B common stock of Parent to NuDevco Holdings and NuDevco Retail, (l) the amendment and restatement of the limited liability company agreement of HoldCo, (m) the cancellation of all Equity Interests of Parent held by NuDevco Holdings, (n) the consummation of the IPO, (o) the purchase from NuDevco Holdings by the Parent of a portion of the Equity Interests of HoldCo and the repayment of the intercompany promissory note referred to in clause (h) above in exchange for cash consideration, and (m) the repayment of all obligations under the Existing Credit Agreement allocable to the Loan Parties and the release and termination of all obligations, liabilities and Liens of each Loan Party relating to the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement).

“IPO Restructuring Documents” means (a) the Transaction Agreement dated as of June 18, 2014 among Ventures, NuDevco Holdings, NuDevco Retail, Spark Energy Holdings, LLC, HoldCo, and Parent, (b) the Transaction Agreement II dated as of July 30, 2014 among Parent, HoldCo, NuDevco Retail, NuDevco Holdings, and Associated Energy Services, LP, (c) the Tax Receivable Agreement, (d) the Underwriting Agreement dated as of July 28, 2014 among Robert W. Baird & Co. Incorporated, Stifel, Nicolaus & Company, Incorporated, and the other parties listed on Schedule A thereto, (e) the Inter-Borrower Agreement dated as of August 1, 2014 among Ventures, Spark Energy Holdings, LLC, Spark, SEG, and Associated Energy Services, LP, (f) and the Registration Rights Agreement dated as of August 1, 2014 among Parent, NuDevco Retail, and NuDevco Holdings, and (g) the Promissory Note dated June 18, 2014 by Spark payable to Ventures in the principal amount of \$50,000.

“IRS” means the Internal Revenue Service, and any Governmental Authority succeeding to any of its principal functions under the Code.

“Issuance Date” means the date on which any Letter of Credit is actually Issued hereunder.

“Issue” means, with respect to any Letter of Credit, to issue or to extend the expiry of, or to renew or increase the amount of, such Letter of Credit; and the terms “Issued,” “Issuing” and “Issuance” have corresponding meanings.

“Issuing Bank Sub-Limit” means, with respect to each Issuing Bank, the limit set opposite such Issuing Bank under the heading “Sub-Limit” in the table below or such other amount as may be agreed to in writing by the Co-Borrowers, the Agent and the applicable Issuing Bank:

<u>Issuing Bank</u>	<u>Sub-Limit</u>
Société Générale	\$70,000,000

“Issuing Bank” means Société Générale and any of its Affiliates and any other Bank or any Affiliate of any Bank that has requested and has received Agent’s consent to Issue Letters of Credit hereunder, in such Bank’s or Affiliate’s capacity as an issuer of one or more Letters of Credit hereunder.

“L/C Advance” means each Bank’s participation in any L/C Borrowing or Reducing L/C Borrowing in accordance with its Pro Rata Share (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Agreement, with respect to each Non-Defaulting Bank, its Pro Rata Adjusted Advance Share, if applicable) with respect to Letters of Credit Issued prior to the Conversion to Reduced Funding Banks Date and the Approving Banks’ participation in any L/C Borrowing or Reducing L/C Borrowing in accordance with its Pro Rata Share (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Agreement, with respect to each Non-Defaulting Bank, its Pro Rata Adjusted Advance Share, if applicable) with respect to all Letters of Credit Issued thereafter.

“L/C Amendment Application” means an application form for amendment of outstanding Standby or Documentary Letters of Credit as shall at any time be in use at the Issuing Bank, as the Issuing Bank shall request.

“L/C Application” means an application form for Issuances of Standby or Documentary Letters of Credit as shall at any time be in use at the Issuing Bank, as the Issuing Bank shall request.

“L/C Borrowing” means an extension of credit under the Working Capital Line resulting from either a drawing under any Letter of Credit or a Reducing L/C Borrowing, which extension of credit shall not have been reimbursed on the date when made nor converted into a Borrowing of Working Capital Loans under Section 3.03.

“L/C Issuance” means the Issuance of a Letter of Credit under the Working Capital Line.

“L/C Obligations” means at any time the sum of (a) the aggregate undrawn amount of all Letters of Credit then outstanding, plus (b) the amount of all unreimbursed drawings under all Letters of Credit, which will constitute an L/C Borrowing until reimbursed or converted into a Borrowing of Working Capital Loans.

“L/C-Related Documents” means the Letters of Credit, the L/C Applications, the L/C Amendment Applications and any other document relating to any Letter of Credit, including, but not limited to, any of the Issuing Bank’s standard form documents for letter of credit issuances.

“L/C Sub-limit Caps” means the following sub-limit caps upon L/C Obligations under particular types of Letters of Credit Issued under the Working Capital Line as follows:

(a) Documentary and Standby Letters of Credit issued for the purpose of financing the purchase of Product and Performance Standby Letters of Credit, in each case with terms of up to 90 days - \$70,000,000.00.

(b) Standby Letters of Credit issued for the purpose of financing a Contango Transaction with terms of up to 365 days - \$70,000,000.00.

(c) Documentary and Standby Letters of Credit issued for the purpose of financing the purchase of Product and Performance Standby Letters of Credit, in each case with terms of greater than 90 days and up to 365 days - \$45,833,333.33 in the aggregate.

Provided that, any Letters of Credit that do not match the terms stated above due to the inclusion of an automatic renewal provision shall be permitted as long as the maximum number of days required for notice of non-renewal is ninety (90) days for Performance Standby Letters of Credit, and sixty (60) days for all other types of Letters of Credit. If Commitments are increased pursuant to Section 2.02, L/C Sub-limit Caps (a) and (b) shall be correspondingly increased and L/C Sub-limit Cap (c) shall be increased pro-rata based on the amount of any increase in the Commitments under Section 2.02 in excess of \$70,000,000 in the aggregate, but shall not exceed \$75,000,000. Such increases to be notified to the Co-Borrowers and the Banks pursuant to Section 2.02(c).

“Letters of Credit” means (a) any letters of credit (whether Standby Letters of Credit or Documentary Letters of Credit) issued by the Issuing Bank under the Working Capital Line pursuant to Article III, and (b) any Reducing Letters of Credit.

“Letters of Credit Fee Rate” means the following percentages per annum:

(a) if the average daily Aggregate Amount during the most recently ended fiscal quarter was less than fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, (i) two percent (2.00%) for Letters of Credit described in clauses (a) and (b) under L/C Sub-limit Caps and (ii) two and one-quarter percent (2.25%) for Letters of Credit described in clause (c) under L/C Sub-limit Caps; and

(b) if the average daily Aggregate Amount during the most recently ended fiscal quarter was greater than or equal to fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, (i) two and one-quarter percent (2.25%) for Letters of Credit described in clauses (a) and (b) under L/C Sub-limit Caps and (ii) two and one-half percent (2.50%) for Letters of Credit described in clause (c) under L/C Sub-limit Caps.

The Letter of Credit Fee Rate for any fiscal quarter shall be determined by the Agent based upon the average Aggregate Amount outstanding and the average aggregate Commitments of the Banks in effect, in each case, on each day during the fiscal quarter most recently ended, and any such determination shall be conclusive and binding absent manifest error. Any increase or decrease in the Letter of Credit Fee Rate resulting from a change in the

average daily Aggregate Amount or aggregate Commitments of the Banks during any fiscal quarter shall become effective as of the first day of the subsequent fiscal quarter, as notified by the Agent to the Co-Borrowers. Notwithstanding the foregoing, the Letter of Credit Fee Rate shall be deemed to be the Letter of Credit Fee Rate described in clause (a) above from and after the Closing Date through and including the last day of the first full fiscal quarter ending after the Closing Date.

“Letters of Credit for Product Not Yet Delivered” shall mean an amount equal to the face amount of any Letter of Credit for the purchase of Product minus (i) the value (determined by means of a commercially reasonable method agreed to between Co-Borrowers and Agent) of accounts payable and any other costs and liabilities incurred by the Co-Borrowers for the purchase of Products related to such Letter of Credit by the Co-Borrowers under such Letters of Credit with respect to which title to such Products has passed to a Co-Borrower as of the date of calculation thereof and is included as part of the Co-Borrowers’ Eligible Inventory, minus (ii) any marked-to-market loss liability on any open forward contract or open over-the-counter transaction, minus (iii) any liability pertaining to an exchange payable, minus (iv) any other counterclaim that can be made against such Letter of Credit. The amounts resulting from such calculation shall not be duplicative of amounts included in the calculation of any other line item in the Borrowing Base Advance Cap for any reason.

“Lien” means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or other encumbrance, lien (statutory or otherwise) or preferential arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of any financing statement naming any Co-Borrower as debtor, under the Uniform Commercial Code or any comparable law).

“Loan” means an extension of credit by the Banks to the Co-Borrowers under Article II or Article III, including Working Capital Loans.

“Loan Documents” means this Agreement, the Notes, the Guaranty Agreement, the Security Documents, the Intercreditor Agreement, the L/C-Related Documents, each Subordination Agreement, if and when in effect, and all other documents delivered to the Banks in connection herewith, each as amended, modified or restated from time to time.

“Loan Party” means each Co-Borrower and each Guarantor.

“Lock Box” has the meaning specified in Subsection 7.08(a).

“Long Position” means for each Co-Borrower, (a) the aggregate number of MMBtus of natural gas which are either held in inventory by such Co-Borrower or which such Co-Borrower has contracted to purchase (whether by purchase of a contract on a commodities exchange or otherwise), or which such Co-Borrower will receive on exchange or under a swap contract including, without limitation, all option contracts representing the obligation of such Co-Borrower to purchase natural gas at the option of a third party, and in each case, for which a

fixed purchase price has been set or (b) the aggregate number of megawatt hours of electricity, which such Co-Borrower has contracted to purchase (whether by purchase of a contract on a commodities exchange or otherwise), or which such Co-Borrower will receive on exchange or under a swap contract including, without limitation, all option contracts representing the obligation of such Co-Borrower to purchase electricity at the option of a third party, and in each case, for which a fixed purchase price has been set. Long Positions will be expressed as a positive number.

“Majority Banks” means, as of any date of determination, one or more Banks having more than 50% of Commitments or, if the Commitment of each Bank to make Loans and the obligation of the Issuing Bank to Issue Letters of Credit have been terminated pursuant to Section 8.02, Banks holding in the aggregate more than 50% of the Effective Amount of all Loans and L/C Obligations (with the aggregate amount of each Bank’s risk participation and funded participation in L/C Obligations being deemed “held” by such Bank for purposes of this definition).

“Margin Stock” means “margin stock” as such term is defined in Regulation T, U or X of the FRB.

“Marketable Securities” means (a) certificates of deposit issued by any bank with a Fitch rating of A or better, (b) commercial paper rated P-1, A-1 or F-1, (c) bankers acceptances rated Prime, or (d) U.S. Government obligations with tenors of 90 days or less.

“Material Adverse Effect” means (a) a material adverse effect upon, the operations, business, properties, or condition (financial or otherwise) of the Loan Parties taken as a whole, (b) a material impairment of the ability of any Loan Party or the Loan Parties to perform under any Loan Document, or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document or the rights and remedies of the Agent, Issuing Bank or the Banks thereunder.

“Multiemployer Plan” means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“Net Position” means the sum of all Long Positions and Short Positions of each of the Co-Borrowers.

“Net Position Report” means a report which details the Net Position of each of the Co-Borrowers and includes each Co-Borrower’s certification that it is in compliance with Section 7.17 of this Agreement, substantially in the form attached hereto as Exhibit C, or in any other form acceptable to the Banks, which Net Position Report shall include, on a monthly basis, detailed information on volumetric positions with mark to market valuation on a dollar basis.

“Net Working Capital” means the net working capital of Parent (which includes the Co-Borrowers) on a Consolidated basis (i) including the portion of accumulated other comprehensive income (to the extent negative) for which there exists an offsetting unrecognized profit from physical transactions not included elsewhere on the balance sheet, (ii) excluding accumulated other comprehensive income (to the extent positive), (iii) including unrealized

losses recorded on the balance sheet and income statement to the extent that there is an offsetting physical transaction with a gain that has not been recorded on the balance sheet and income statement, and excluding unrealized gains recorded on the balance sheet and income statement but only to the extent that such unrealized gains exceed losses on offsetting physical transactions for which losses have been recorded on the balance sheet and income statement, (iv) excluding any accrued and unpaid interest under the Working Capital Line if not already recorded in current liabilities, (v) excluding cash deposits subject to Liens permitted by Section 7.10(n) in excess of \$5,000,000, (vi) excluding any Subordinated Debt permitted by Section 7.13(c) from current liabilities, (vii) excluding unsecured Indebtedness permitted under Section 7.13(j) from current liabilities, (viii) excluding all amounts due from employees, owners, Subsidiaries and Affiliates which are not a Co-Borrower or a Guarantor, other than Affiliate Obligations which will be included if the amount owing from any Affiliate or Subsidiary that is not a Co-Borrower is less than \$1,000,000 individually and less than \$3,000,000 in the aggregate, or if any such individual or aggregate amount is more, such Affiliate Obligation is acceptable to the Agent, (ix) excluding securities which are not "Marketable Securities" as defined herein and which the Agent decides to exclude from Net Working Capital, (x) excluding mark-to-market losses (not already deducted in (iii) above), and (xi) excluding the value of any Equity Investment (included in net working capital) if the Agent, on behalf of the Secured Parties, has not been granted a first priority security interest in such Equity Investment. In calculating Net Working Capital, the amount of Subordinated Debt permitted by Section 7.13(c) excluded from liabilities in such calculation shall not exceed 50% of the resultant Net Working Capital.

"New Bank Agreement" means a New Bank Agreement, substantially in the form of Exhibit H, among the Co-Borrowers, the Agent, and a new financial institution making a Commitment pursuant to Section 2.02 of this Agreement.

"Non Defaulting Bank" means, at any time, each Bank that is not a Defaulting Bank at such time.

"Note" means a promissory note made by a Co-Borrower in favor of a Bank evidencing Loans made by such Bank, substantially in the form of Exhibit B.

"Notice of Borrowing" means a request by the Co-Borrowers to the Agent for either a Borrowing of Loans or an L/C Issuance, each such notice to be in the appropriate form attached hereto as Exhibit A-1 or in any other form acceptable to the Agent.

"Notice of Conversion/Continuation" means a notice in substantially the form of Exhibit A-2.

"NuDevco Holdings" means NuDevco Retail Holdings, LLC, a Delaware limited liability company.

"NuDevco Retail" means NuDevco Retail, LLC, a Delaware limited liability company.

"NYMEX" means the New York Mercantile Exchange.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, including, but not limited to, the obligation to reimburse L/C Obligations to an Issuing Bank, due or to become due, now existing or hereafter arising and, including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof or any proceeding under any debtor relief laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, and (b) all indebtedness, liabilities and obligations owing by any Loan Party to any Swap Bank under a Swap Contract, whether due or to become due, absolute or contingent, or now existing or hereafter arising, including Swap Contracts in effect on the Closing Date (as such Swap Contracts may be amended from time to time); provided that (i) when any Swap Bank assigns or otherwise transfers any interest held by it under any Swap Contract to any other Person pursuant to the terms of such agreement, the obligations thereunder shall constitute Swap Obligations only if such assignee or transferee is also then a Bank or an Affiliate of a Bank and a party to the Intercreditor Agreement and (ii) if a Swap Bank ceases to be a Bank or an Affiliate of a Bank hereunder, obligations owing to such Swap Bank shall be included as Swap Obligations only to the extent such obligations arise from transactions under such individual Swap Contracts (and not the master agreement between such parties) entered into prior to the time such Swap Bank ceases to be a Bank or an Affiliate of a Bank hereunder, without giving effect to any extension, increases, or modifications thereof which are made after such Swap Bank ceases to be a Bank or an Affiliate of a Bank hereunder; provided further that, “Obligations” shall exclude any Excluded Swap Obligations. For purposes of determining the amount of the Loan Parties’ Swap Obligations, the amount of such Swap Obligation shall be an amount equal to the Close-Out Amount with respect to any Swap Contract.

“OFAC” means the U.S. Treasury Department Office of Foreign Assets Control.

“Originating Bank” has the meaning specified in Subsection 10.08(d).

“Other Taxes” means any present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Documents.

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

“Participant” has the meaning specified in Subsection 10.08(d).

“Participant Register” has the meaning specified in Subsection 10.08(d).

“Patriot Act” has the meaning specified in Section 10.21.

“PBGC” means the Pension Benefit Guaranty Corporation and any successor thereto.

“Performance Standby Letters of Credit” means Standby Letters of Credit securing performance obligations, transportation obligations, swap obligations or other obligations of the Co-Borrowers owing to pipeline and storage companies.

“Permitted Acquisitions” means the acquisition of 50% or more of the Equity Interest in another Person or the acquisition of any business, division or enterprise, or all or substantially all of the assets of another Person, *provided* (a) such acquisition is consistent with or complimentary to the lines of business presently conducted by the Co-Borrowers or in other business activities in the energy business related to such lines of business, (b) before and immediately after giving effect to such acquisition no Default or Event of Default shall have occurred and be continuing, (c) immediately after giving effect to such acquisition, the Loan Parties shall be in pro forma compliance with the financial covenants in Section 7.09, (d) the purchase price for any such acquisition does not exceed \$10,000,000.00 without the prior written consent of the Agent or \$20,000,000.00 without the prior written consent of the Majority Banks, and (e) (i) in the case of an acquisition of Equity Interests, the acquisition is structured so that the acquired Person becomes a Subsidiary of a Co-Borrower, and the Co-Borrowers comply with Section 7.23 with respect to such Person and (ii) in the case of an acquisition of assets, such acquisition is structured so that a Loan Party acquires such assets.

“Permitted Liens” has the meaning specified in Section 7.10.

“Person” means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture or Governmental Authority.

“Platform” has the meaning specified in Subsection 10.02(e).

“Pledge Agreement” means each pledge agreement listed on the Security Schedule and each other pledge agreement executed from time to time by any Person in favor of the Agent in respect of any or all of the Obligations, as each may be amended, restated, supplemented or otherwise modified from time to time.

“POR Agreement” means any agreement for billing services and for the assignment of accounts receivables between a Co-Borrower and a third party as may be approved by the Agent from time to time in its sole discretion. The POR Agreements in effect as of the Closing Date are set forth in Schedule 1.01.

“POR Collateral” means accounts receivable assigned by a Co-Borrower pursuant to a POR Agreement.

“PP&E” means all property, plant and equipment that has been or should be, in accordance with GAAP, recorded as property, plant and equipment.

“Pro Rata Adjusted Percentage” means, at any time that one or more Banks qualifies as a Defaulting Bank hereunder, with respect to each Non-Defaulting Bank, the percentage equivalent (expressed as a decimal, rounded to the ninth decimal place) at such time of such Bank’s Commitment divided by the aggregate Commitments (excluding the Commitments of all Defaulting Banks); *provided* that the application of the Pro Rata Adjusted Percentage shall in no event result in a Non-Defaulting Bank being obligated to extend credit in

an amount in excess of its Commitment, and no adjustment to a Non-Defaulting Bank's Commitment shall arise from such Non-Defaulting Bank's agreement herein to fund in accordance with its Pro Rata Adjusted Percentage.

“Pro Rata Share” means, with respect to any Bank at any time, the percentage (carried out to the ninth decimal place) of the aggregate Commitments represented by such Bank's Commitment at such time. If the commitment of each Bank to make Loans has been terminated pursuant to Section 8.02 or if the aggregate Commitments have expired, then the percentage of each Bank shall be determined based on the Pro Rata Share of such Bank most recently in effect, giving effect to any subsequent assignments. The initial Pro Rata Share of each Bank is set forth as its “Pro Rata Share” opposite the name of such Bank on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Bank becomes a party hereto, as applicable.

“Product” means natural gas and electricity.

“Prospectus” means the latest prospectus included in the Registration Statement or filed with the SEC pursuant to Rule 424(b) under the Securities Act prior to the date hereof.

“Public Bank” has the meaning specified in Subsection 10.02(e).

“Qualified Accounts” means receivables under contracts which upon performance by the applicable Co-Borrower will become Eligible Accounts of such Co-Borrower.

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

“Recipient” means any (i) Bank, (ii) the Agent, and (iii) the Issuing Bank, as applicable.

“Reducing Letters of Credit” means any standby letters of credit that (a) are Issued by the Issuing Bank under the Working Capital Line pursuant to Article III and (b) specifically provide that the amount available for drawing under such letters of credit will be reduced, automatically and without any further amendment or endorsement to such letters of credit, by the amount of any payment or payments made to the beneficiary of such letter of credit by the Co-Borrowers if (x) Co-Borrowers furnish evidence reasonably acceptable to Agent that such payment or payments have been made, or (y) such payment or payments (i) are made through the Issuing Bank and (ii) reference such Reducing Letters of Credit by the Letter of Credit numbers thereof, notwithstanding the fact that such payment or payments are not made pursuant to conforming and proper draws under such letter of credit.

“Reducing L/C Borrowing” means any extension of credit by the Banks under the Working Capital Line for the purpose of funding any payment or payments made to the

beneficiary of a Reducing Letter of Credit by the Co-Borrowers if such payment or payments (i) are made through the Issuing Bank, (ii) reference the Reducing Letter of Credit by the letter of credit number thereof, and (iii) are not made pursuant to a conforming and proper draw under such Reducing Letter of Credit.

“Register” has the meaning specified in Section 10.07(b).

“Registration Statement” means that Registration Statement on Form S-1 (File No. 333-196375) filed by Parent with the SEC, as amended on or prior to the date hereof.

“Requirement of Law” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject but excluding any such determination of an arbitrator or Governmental Authority that is being appealed or is being validly challenged in good faith by such Person.

“Reserves” means reserves for any warehouse, bailee or storage charges or rent where inventory is located in an amount not less than an amount necessary to pay all such charges or rents for three months.

“Responsible Officer” means (a) with respect to any Person that is a corporation, the officers of such Person listed on the Responsible Officer List provided by the Loan Parties to the Agent from time to time, (b) with respect to any Person that is a limited liability company, if such Person has officers, then the officers of such Person listed on the Responsible Officer List provided by the Loan Parties to the Agent from time to time, and if such Person is managed by members, then a Responsible Officer of such Person’s managing member, and if such Person is managed by managers, then a manager (if such manager is an individual) or a Responsible Officer of such manager (if such manager is an entity), and (c) with respect to any Person that is a general partnership, limited partnership or a limited liability partnership, the Responsible Officer of such Person’s general partner or partners.

“Responsible Officer List” means the list of Responsible Officers provided by the Loan Parties to the Agent from time to time.

“Risk Management Policy” means the energy commodity risk management policy of Co-Borrowers, as such policy may be amended from time to time pursuant to Section 7.27.

“Sanctions” has the meaning specified in Section 6.25.

“SEC” means the Securities and Exchange Commission.

“Secured Parties” means the Agent, each Issuing Bank, each Bank and each Swap Bank.

“Security Agreement” means that certain Security Agreement among the Co-Borrowers, the Guarantors and Société Générale, as Agent, dated as of August 1, 2014, for the ratable benefit of the Secured Parties, as amended, restated, supplemented or otherwise modified from time to time.

“Security Documents” means the instruments listed in the Security Schedule and all other security agreements, deeds of trust, mortgages, chattel mortgages, pledges, assignments, deposit instruments, guarantees, financing statements, continuation statements, extension agreements and other agreements or instruments now, heretofore, or hereafter delivered by any Co-Borrower to the Agent for the ratable benefit of the Banks and the Swap Banks in connection with this Agreement or any transaction contemplated hereby to secure the payment of any part of the Obligations or the performance of any Co-Borrower’s other duties and obligations under the Loan Documents.

“Security Schedule” means Annex A hereto.

“SEG” means Spark Energy Gas, LLC, a Texas limited liability company.

“SEG Bank Blocked Account” means SEG’s accounts nos. 87113329, 29200734 and 29200815 maintained with Compass Bank or an account with a depository institution acceptable to Agent into which collections from SEG’s accounts will be deposited pursuant to Section 7.08.

“Sharing Event” shall have the meaning ascribed to it in the Intercreditor Agreement.

“Short Position” means for each Co-Borrower, (a) the aggregate number of MMBtus of natural gas which such Co-Borrower has contracted to sell (whether by sale of a contract on a commodities exchange or otherwise) or deliver on exchange or under a swap contract, including, without limitation, all option contracts representing the obligation of such Co-Borrower to sell natural gas at the option of a third party and in each case for which a fixed sales price has been set or (b) the aggregate number of megawatt hours of electricity which such Co-Borrower has contracted to sell (whether by sale of a contract on a commodities exchange or otherwise) or deliver on exchange or a swap contract, including, without limitation, all option contracts representing the obligation of such Co-Borrower to sell electricity at the option of a third party and in each case for which a fixed sales price has been set. Short Positions will be expressed as a negative number.

“Spark” means Spark Energy, LLC, a Texas limited liability company.

“Spark Bank Blocked Account” means Spark’s accounts nos. 87113124, 12217196, 23158868 and 29200793 maintained with Compass Bank or an account with a depository institution acceptable to Agent into which collections from Spark’s accounts will be deposited pursuant to Section 7.08.

“Standby Letter of Credit” means a Letter of Credit which is not intended at the time Issued to be drawn upon.

“Subordinated Debt” means unsecured Indebtedness of the Co-Borrowers (a) no part of the principal of which is required to be paid (whether by way of mandatory sinking fund,

mandatory redemption, mandatory prepayment or otherwise) prior to the date that is six (6) months after the Expiration Date, (b) the terms and provisions of which are otherwise reasonably satisfactory to the Agent and (c) that has been subordinated to the Obligations in right and time of payment pursuant to the Subordination Agreement.

“Subordination Agreement” means a subordination agreement, in form and substance acceptable to the Agent and the Majority Banks, among the Co-Borrowers, the owner and holder of the Subordinated Debt and the Agent.

“Subsidiary” of a Person means any corporation, association, partnership, joint venture or other business entity of which more than 50% of the voting stock or other equity interests (in the case of Persons other than corporations), is owned or controlled directly or indirectly by the Person, or one or more of the Subsidiaries of the Person, or a combination thereof. For purposes of this Agreement and each other Loan Document, HoldCo and its Subsidiaries shall constitute Subsidiaries of the Parent. Unless the context otherwise clearly requires, references herein to a “Subsidiary” refer to a Subsidiary of any of the Loan Parties.

“Swap Banks” means any Person that, at the time it enters into a Swap Contract with a Co-Borrower permitted under Article 7, is a Bank or an Affiliate of a Bank and is a party to the Intercreditor Agreement, in its capacity as a party to such Swap Contract.

“Swap Contract” means any agreement entered into with any Swap Bank, whether or not in writing, relating to any single transaction that is a rate swap, a basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, currency option or any other similar transaction (including any transaction involving physical delivery and any option to enter into any of the foregoing) or any combination of the foregoing and, unless the context clearly requires, any master agreement relating to or governing any or all of the foregoing. No Swap Contract will be executed hereunder unless it is subject to the applicable ISDA Master Agreement or its equivalent (i.e., long-form confirmations). For the avoidance of doubt, the term “Swap Contract” shall include Interest Rate Contracts.

“Swap Obligations” means the obligations referred to in clause (b) of the definition of Obligations.

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

“Synthetic Lease Obligation” means the monetary obligation of a Person under a so-called synthetic, off-balance sheet or tax retention lease.

“Tangible Net Worth” means the Consolidated equity of Parent (which includes the Co-Borrowers), as determined in accordance with GAAP, (a) plus the portion of accumulated other comprehensive income (to the extent negative) for which there exists an offsetting unrecognized profit from physical transactions not included elsewhere on the balance sheet, (b) minus accumulated other comprehensive income (to the extent positive), (c) plus unrealized losses recorded on the balance sheet and income statement to the extent that there is an offsetting physical transaction with a gain that has not been recorded on the balance sheet and income statement, minus unrealized gains recorded on the balance sheet and income statement but only to the extent that such unrealized gains exceed losses on offsetting physical transactions for which losses have been recorded on the balance sheet and income statement, (d) minus all amounts due from employees, owners, Subsidiaries and Affiliates, investments in capital stock and intangible assets of the Co-Borrowers unless the amount due from an Affiliate constitutes an Affiliate Obligation (but only to the extent that such Affiliate Obligation is permitted to be included in the calculation of Net Working Capital), (e) minus mark-to-market losses (not already deducted in (c) above), (f) minus the value of any Equity Investment if the Agent, on behalf of the Secured Parties, has not been granted a first priority security interest in such Equity Investment, (g) plus Subordinated Debt permitted by Section 7.13 (c); *provided*, that for purposes of calculating Tangible Net Worth, Subordinated Debt permitted by Section 7.13(c) may not exceed fifty percent (50%) of the resultant Tangible Net Worth, (h) minus cash deposits subject to Liens permitted by Section 7.10(n) in excess of \$5,000,000.

“Tax Receivable Agreement” means the Tax Receivable Agreement dated as of the Closing Date among the Parent, HoldCo, NuDevco Holdings, and NuDevco Retail.

“Taxes” means any and all present or future taxes, levies, assessments, imposts, duties, deductions, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of a Bank, taxes imposed on or measured by its net income by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank is organized or maintains a lending office.

“Tier I Account” means an Eligible Account with a Tier I Account Party.

“Tier I Account Party” means an Account Debtor which is (a) of the type listed as a Tier I Account Party on the Credit Limit Annex, or (b) approved by the Agent as a Tier I Account Party.

“Tier I Unbilled Qualified Account” means Unbilled Qualified Accounts with a Tier I Account Party.

“Tier II Account” means an Eligible Account with a Tier II Account Party.

“Tier II Account Party” means an Account Debtor which is (a) of the type listed on the Credit Limit Annex as a Tier II Account Party or (b) approved by the Agent as a Tier II Account Party.

“Tier II Unbilled Qualified Account” means Unbilled Qualified Accounts with a Tier II Account Party.

“Title IV Plan” means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“Total Available Commitments” means, at any time, the aggregate Commitments of all Banks minus the aggregate Commitments of all Defaulting Banks at such time.

“Type” means a Base Rate Loan, COF Rate Loan or a Eurodollar Rate Loan.

“Unbilled Qualified Accounts” means Eligible Accounts, based upon the value of underlying sales contracts, of the Co-Borrowers for Product which have been delivered to an account debtor and which would be Eligible Accounts but for the fact that such Accounts have not actually been invoiced at such time.

“United States” and “U.S.” each means the United States of America.

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

“U.S. Tax Compliance Certificate” has the meaning specified in Section 9.10(b)(i).

“Ventures” means Spark Energy Ventures, LLC, a Texas limited liability company.

“Wells Fargo Bank Blocked Account” means SEG’s account nos. 4174907669 and 4945021152 maintained with Wells Fargo Bank into which collections from SEG’s accounts will be deposited pursuant to Section 7.08.

“Withdrawal Liability” means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

“Working Capital Line” means the line of credit provided hereunder. As of the Closing Date, the Working Capital Line is \$70,000,000.00, subject to increase pursuant to Section 2.02.

“Working Capital Loans” shall have the meaning set forth in Section 2.01.

1.02 Other Interpretive Provisions.

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and Subsection, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(c) (i) The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however, evidenced.

(ii) The term “including” is not limiting and means “including without limitation.”

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

(d) Unless otherwise expressly provided herein, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(e) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms but only for the specific purposes for which they apply.

(g) This Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to the Banks and the Co-Borrowers, and are the products of all parties. Accordingly, they shall not be construed against any of the parties merely because of such parties’ involvement in their preparation.

1.03 Accounting Principles .

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made in accordance with GAAP consistently applied.

(b) References herein to “fiscal year” and “fiscal quarter” refer to such fiscal periods of each of the Loan Parties.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either a Loan Party or the Majority Banks shall so request, the Agent, the Banks and the Loan Parties shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority Banks); *provided that* , until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Loan Parties shall provide to the Agent and the Banks financial statements and other documents required under this Agreement or as reasonably

requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the financial statements referred to in Section 6.11(a) for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

ARTICLE 2 THE CREDITS

2.01 Working Capital Loans. Subject to the terms and conditions set forth herein, each Bank severally agrees to make loans (each such loan, a “Working Capital Loan”) to the Co-Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Bank’s Commitment; *provided, however*, that after giving effect to any Borrowing:

(a) the aggregate amount of Working Capital Loans plus the Effective Amount of all L/C Obligations shall not exceed the lesser of (i) the aggregate Commitments of the Banks, or, if a Defaulting Bank exists hereunder, the Total Available Commitments and (ii) the Borrowing Base Advance Cap determined as of the date of such request on the basis of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b) two (2) Business Days prior to the date on which the requested Working Capital Loans are to be made,

(b) the aggregate Effective Amount of Working Capital Loans of any Bank, plus such Bank’s Pro Rata Share of the Effective Amount of all L/C Obligations shall not exceed such Bank’s Commitment, and

(c) the amount of such Working Capital Loan, plus the Effective Amount of all Working Capital Loans made for the purpose described in the applicable Advance Sub-limit Cap shall not exceed the applicable Advance Sub-limit Cap.

Within the limits of each Bank’s Commitment, and subject to the other terms and conditions hereof, the Co-Borrowers’ ability to obtain Working Capital Loans shall be fully revolving, and accordingly the Co-Borrowers may borrow under this Section 2.01, prepay under Section 2.06, and re-borrow under this Section 2.01. Working Capital Loans may be Base Rate Loans, COF Rate Loans or Eurodollar Rate Loans, as further provided herein.

2.02 Increase in Commitments.

(a) Subject to the conditions set forth in clauses (b) and (c) of this Section 2.02, the Co-Borrowers may request that the amount of the aggregate Commitments be increased one or more times, in each case in a minimum amount of \$5,000,000.00 or in integral multiples of \$5,000,000.00 in excess thereof; *provided* that the aggregate Commitments after any such increase may not exceed \$120,000,000.

(b) Each such increase shall be effective only upon the following conditions being satisfied: (i) the Agent and each Issuing Bank shall have approved such increase, each

such approval not to be unreasonably withheld, (ii) no Default or Event of Default has occurred and is continuing at the time thereof or would be caused thereby, (iii) either the Banks having Commitments hereunder at the time the increase is requested agree to increase their Commitments in the amount of the requested increase or other financial institutions agree to make a Commitment in the amount of the difference between the amount of the increase requested by the Co-Borrowers and the amount by which the Banks having Commitments hereunder at the time the increase is requested are increasing their Commitments, (iv) such Banks and other financial institutions, if any, shall have executed and delivered to the Agent a Commitment Increase Agreement or a New Bank Agreement, as applicable, and (v) the Co-Borrowers shall have delivered such evidence of authority for the increase (including without limitation, certified resolutions of the applicable managers and/or members of the Co-Borrowers authorizing such increase) as the Agent may reasonably request.

(c) Each financing institution to be added to this Agreement as described in Section 2.02(b)(iii) above shall execute and deliver to the Agent a New Bank Agreement, pursuant to which it becomes a party to this Agreement. Each Bank agreeing to increase its Commitment as described in Section 2.02(b)(iii) shall execute and deliver to the Agent a Commitment Increase Agreement pursuant to which it increases its Commitment hereunder. In addition, a Responsible Officer shall execute and deliver to the Agent, for each Bank being added to this Agreement, a Note payable to such new Bank in the principal amount of the Commitment of such Bank, and for each Bank increasing its Commitment, a replacement Note payable to such Bank, in the principal amount of the increased Commitment of such Bank. Each such Note shall be dated the effective date of the pertinent New Bank Agreement or Commitment Increase Agreement. In the event a replacement Note is issued to a Bank, such Bank shall mark the original note as "REPLACED" and shall return such original Note to the Co-Borrowers. Upon execution and delivery to the Agent of the Note and the execution by the Agent of the relevant New Bank Agreement or Commitment Increase Agreement, as the case may be, such new financing institution shall constitute a "Bank" hereunder with a Commitment as specified therein, or such existing Bank's Commitment shall increase as specified therein, as the case may be, and the Agent shall notify the Co-Borrowers and all Banks of such addition or increase, and the final allocations thereof, and provide a revised Schedule 2.01 reflecting such additions or increase together with a schedule showing the revised Advance Sub-limit Caps and the revised L/C Sub-limit Caps.

(d) Notwithstanding anything to the contrary in this Section 2.02, the Banks having Commitments hereunder at the time any such increase is requested shall have the first right, but shall not be obligated, to participate in such increase by agreeing to increase their respective Commitments by their Pro Rata Share to the extent of such increase. The Agent shall not, and shall not be obligated to, permit any financial institutions that do not have, at that time, Commitments hereunder to make commitments for portions of the requested increase not assumed by the Banks having Commitments hereunder until each of such Banks have agreed to increase their Commitments or declined to do so. To facilitate the Banks' right of first refusal, HoldCo shall, by written notice to the Agent (which shall promptly deliver a copy to each Bank) given not less than 30 days prior to the requested effective date of the increase in Commitments (the "Increase Effective Date"), request that the Banks increase their Commitments. Each Bank shall, by notice to HoldCo and the Agent given not later than 15 days following receipt of HoldCo's request, advise HoldCo whether or not it will increase its Commitments as of the

Increase Effective Date. Any Bank that has not so advised HoldCo and the Agent by such day shall be deemed to have declined to agree to such increase in its Commitment. The decision to increase its Commitment hereunder shall be at the sole discretion of each Bank.

2.03 Loan Accounts. The Loans and Letters of Credit Issued may be evidenced by Notes and loan accounts. Each Bank may endorse on the schedules annexed to its Note the date, amount and maturity of each Loan made by it and the amount of each payment of principal made by the Co-Borrowers with respect thereto. Each Bank is irrevocably authorized by the Co-Borrowers to endorse its Note and records and such Bank's records shall be conclusive absent manifest error; *provided, however*, that the failure of any Bank to make, or an error in making, a notation thereon with respect to any Loan shall not limit or otherwise affect the Obligations of the Co-Borrowers hereunder or under such Note to such Bank.

2.04 Procedure for Borrowing.

(a) Each Borrowing of Loans consisting only of Base Rate Loans or COF Rate Loans shall be made upon the Co-Borrowers' irrevocable written notice delivered to the Agent in the form of a Notice of Borrowing, which notice must be received by Agent prior to 1:00 p.m. (New York City time) on the Borrowing Date specifying the amount of the Borrowing. Each Borrowing of Loans that includes any Eurodollar Rate Loans shall be made upon the Co-Borrowers' irrevocable written notice delivered to the Agent in the form of a Notice of Borrowing (which notice must be received by Agent prior to 1:00 p.m. (New York City time) three (3) Business Days prior to the requested Borrowing Date), specifying the amount of the Borrowing. Each such Notice of Borrowing shall be submitted by HoldCo by electronic transfer or facsimile, confirmed immediately in an original writing and shall specify (i) the Type of Loan requested and (ii) the Co-Borrower(s) for whom such Loan is requested. Each requested Eurodollar Rate Loan must be in a principal amount of at least \$5,000,000.00 and any multiple of \$1,000,000.00 in excess thereof.

(b) Following receipt of a Notice of Borrowing requesting Working Capital Loans, the Agent shall promptly notify each Bank of the amount of its Pro Rata Share of such requested Working Capital Loans.

(c) Each Bank will make the amount of its Pro Rata Share of such Borrowing available to Agent for the account of the Co-Borrowers at Agent's Payment Office by 3:00 p.m. (New York City time) on the Borrowing Date requested by the Co-Borrowers in funds immediately available to Agent. The proceeds of all such Loans will then be made available to the Co-Borrowers by the Agent by crediting the Bank Blocked Account designated by HoldCo with the aggregate of the amounts made available to the Agent by the Banks and in like funds as received by the Agent.

2.05 Conversion and Continuation Elections.

(a) The Co-Borrowers may, upon irrevocable written notice to Agent in accordance with Subsection 2.05(b):

(i) elect, as of any Business Day, in the case of Base Rate Loans or COF Rate Loans, or as of the last day of the applicable Interest Period, in the case of any

Eurodollar Rate Loan, to convert any such Loans into Loans of any other Type (*provided , however* , the principal amount of each Eurodollar Rate Loan must be at least \$5,000,000.00); or

(ii) elect, as of the last day of the applicable Interest Period, to continue any Loans having Interest Periods expiring on such day (*provided , however* , the principal amount of each Eurodollar Rate Loan must be at least \$5,000,000.00);

provided , however , that if at any time the aggregate amount of Eurodollar Rate Loans in respect of any Borrowing is reduced, by payment, prepayment, or conversion of part thereof, to a principal amount that is less than \$5,000,000.00, such Eurodollar Rate Loans shall automatically convert into Base Rate Loans, and on and after such date the right of the Co-Borrowers to continue such Loans as, and convert such Loans into, Eurodollar Rate Loans shall terminate.

(b) HoldCo shall deliver a Notice of Conversion/Continuation to be received by Agent not later than 1:00 p.m. (New York City time) on the Conversion/Continuation Date if the Loans are to be converted into Base Rate Loans or COF Rate Loans; and three (3) Business Day in advance of the Conversion/Continuation Date, if the Loans are to be converted into or continued as Eurodollar Rate Loans, specifying:

(i) the proposed Conversion/Continuation Date;

(ii) the aggregate amount of Loans to be converted or continued;

(iii) the Type of Loans resulting from the proposed conversion or continuation; and

(iv) other than in the case of conversions into Base Rate Loans or COF Rate Loans, the duration of the requested Interest Period.

(c) If upon the expiration of any Interest Period applicable to Eurodollar Rate Loans, the Co-Borrowers have failed to timely select a new Interest Period to be applicable to its Eurodollar Rate Loans, or if any Default or Event of Default then exists, the Co-Borrowers shall be deemed to have elected to convert such Eurodollar Rate Loans into Base Rate Loans effective as of the expiration date of such Interest Period.

(d) Agent will promptly notify each Bank of its receipt of a Notice of Conversion/Continuation, or, if no timely notice is provided by the Co-Borrowers, Agent will promptly notify each Bank of the details of any automatic conversion. All conversions and continuations shall be made ratably according to the respective outstanding principal amounts of the Loans, with respect to which the notice was given, held by each Bank. Agent will promptly notify, in writing, each Bank of the amount of such Bank's applicable percentage of that Conversion/Continuation.

(e) Unless the Majority Banks otherwise agree, during the existence of a Default or Event of Default, the Co-Borrowers may not elect to have a Loan converted into or continued as a Eurodollar Rate Loan.

(f) After giving effect to any Borrowing, conversion or continuation of Loans, there may not be more than ten (10) Interest Periods in effect.

2.06 Optional Prepayments. The Co-Borrowers may, at any time or from time to time, upon HoldCo's irrevocable written notice to Agent received prior to 12:00 p.m. noon (New York City time) on the date of prepayment, prepay Loans in whole or in part, without premium or penalty. The Agent will promptly notify each Bank of its receipt of any such prepayment, and of such Bank's applicable percentage of such prepayment (which share may be affected by the allocation rules set forth in Section 2.16 with respect to Defaulting Banks).

2.07 Mandatory Prepayments of Loans.

(a) If on any date (i) the Effective Amount of Working Capital Loans then outstanding under any Advance Sub-limit Cap exceeds the amount of such Advance Sub-limit Cap, or (ii) the Effective Amount of all Working Capital Loans then outstanding plus the Effective Amount of all L/C Obligations exceeds the lesser of the aggregate of the Commitments or the Borrowing Base Advance Cap, the Co-Borrowers shall within three Business Days, and without notice or demand, (1) prepay the outstanding principal amount of the Working Capital Loans and L/C Borrowings by an amount equal to the applicable excess, such payments to be applied pro rata, or (2) Cash Collateralize on such date the excess amount pursuant to subsection (b).

(b) If on any date the Effective Amount of all L/C Obligations exceeds the lesser of the aggregate Commitments or the Borrowing Base Advance Cap, or any L/C Obligations relating to a type of Letter of Credit described herein exceeds the applicable L/C Sub-limit Cap, the Co-Borrowers shall Cash Collateralize on such date the outstanding Letters of Credit, or the outstanding type of Letters of Credit, as the case may be, in an amount equal to such excess, and thirty (30) days prior to the Expiration Date, Co-Borrowers shall Cash Collateralize all then outstanding Letters of Credit in an amount equal to one hundred five percent (105%) of the Effective Amount of all L/C Obligations related to such Letters of Credit. If on any date after giving effect to any Cash Collateralization made on such date pursuant to the preceding sentence, the Effective Amount of all Working Capital Loans then outstanding plus the Effective Amount of all L/C Obligations exceeds the lesser of the aggregate Commitments or the Borrowing Base Advance Cap, the Co-Borrowers shall immediately, and without notice or demand, prepay the outstanding principal amount of the Working Capital Loans and L/C Borrowings by an amount equal to the applicable excess, such payments to be applied pro rata. Any cash deposited as cash collateral or portion thereof, shall be returned to Co-Borrowers as soon as reasonably practicable after notice to Agent of the expiration, termination or satisfaction of the Letters of Credit in sufficient amounts such that the Effective Amount of all Working Capital Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed the lesser of the aggregate Commitments or the Borrowing Base Advance Cap.

(c) If an increase in the aggregate Commitments is effected as permitted under Section 2.02, the Co-Borrowers shall prepay any Working Capital Loans and L/C Borrowings outstanding on the date such increase is effected to the extent necessary to keep the outstanding Commitments ratable to reflect the revised Pro Rata Shares of the Banks arising from such increase. Any prepayment made by the Co-Borrowers in accordance with this Section 2.07(c) may be made with the proceeds of Working Capital Loans made by all the Banks in connection such increase occurring simultaneously with the prepayment.

2.08 Termination or Reduction of Commitments. The Co-Borrowers may, upon notice to the Agent by the Co-Borrowers, terminate the aggregate Commitments, or from time to time permanently reduce the aggregate Commitments; *provided* that (i) any such notice shall be received by the Agent not later than noon five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000.00 or any whole multiple of \$1,000,000.00 in excess thereof, and (iii) the Co-Borrowers may not terminate or reduce the aggregate Commitments if, after giving effect thereto, a mandatory prepayment would be required under Section 2.07 (a). The Agent will promptly notify the Banks of any such termination or reduction of the aggregate Commitments. Any reduction of the aggregate Commitments shall be applied to the Commitment of each Bank according to its Pro Rata Share. All fees accrued until the effective date of any termination of the aggregate Commitments and all other amounts payable shall be paid on the effective date of such termination.

2.09 Repayment. The Co-Borrowers shall repay the principal amount of each Working Capital Loan on the Advance Maturity Date for such Loan.

2.10 Interest.

(a) Each Loan (except for a Working Capital Loan made as a result of a drawing under a Letter of Credit or a Reducing L/C Borrowing) shall bear interest on the outstanding principal amount thereof from the applicable Borrowing Date at a floating rate per annum equal to the Base Rate plus the Applicable Margin at all times such Loan is a Base Rate Loan, at a floating rate per annum equal to the COF Rate plus the Applicable Margin at all times such Loan is a COF Rate Loan or at the Eurodollar Rate plus the Applicable Margin at all times such Loan is an Eurodollar Rate Loan. Each Working Capital Loan made as a result of a drawing under a Letter of Credit or a Reducing L/C Borrowing shall bear interest on the outstanding principal amount thereof from the date funded at a floating rate per annum equal to the Base Rate plus the Applicable Margin until such Loan has been outstanding for more than two (2) Business Days and, thereafter, shall bear interest on the outstanding principal amount thereof at a floating rate per annum equal to the Base Rate plus the Applicable Margin, plus two percent (2.0%) per annum (the “Default Rate”).

(b) Interest on each Loan shall be paid in arrears on each Interest Payment Date.

(c) Notwithstanding subsection (a) of this Section, if any amount of principal of or interest on any Loan, or any other amount payable hereunder or under any other Loan Document is not paid in full when due (whether at stated maturity, by acceleration, demand or otherwise), the Co-Borrowers agree to pay interest on such unpaid principal or other amount, from the date such amount becomes due until the date such amount is paid in full, and after as well as before any entry of judgment thereon to the extent permitted by law, payable on demand, at a fluctuating rate per annum equal to the Default Rate.

(d) Anything herein to the contrary notwithstanding, the Obligations of the Co-Borrowers to the Banks hereunder shall be subject to the limitation that payment of interest shall not be required for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the Banks would be contrary to the provisions of any law applicable to the Banks limiting the highest rate of interest that may be lawfully contracted for, charged or received by the Banks, and in such event the Co-Borrowers shall pay the Banks interest at the highest rate permitted by applicable law.

(e) Regardless of any provision contained in the Notes or in any of the Loan Documents, the Banks shall never be deemed to have contracted for or be entitled to receive, collect or apply as interest under the Notes or any Loan Document, or otherwise, any amount in excess of the maximum rate of interest permitted to be charged under applicable law, and, in the event that the Banks ever receive, collect or apply as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance of the Notes, and, if the principal balance of the Notes is paid in full, any remaining excess shall forthwith be paid to the Co-Borrowers. In determining whether or not the interest paid or payable under any specific contingency exceeds the highest lawful rate, the Co-Borrowers and the Banks shall, to the maximum extent permitted under applicable law, (i) characterize any non-principal payment as an expense, fee, or premium, rather than as interest, (ii) exclude voluntary prepayments and the effect thereof, and (iii) spread the total amount of interest throughout the entire contemplated term of such Notes so that the interest rate is uniform throughout such term; *provided, however*, that if all Obligations under the Notes and all Loan Documents are performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual term thereof exceeds the maximum lawful rate, the Banks shall refund to the Co-Borrowers the amount of such excess, or credit the amount of such excess against the aggregate unpaid principal balance of the Banks' Notes at the time in question.

2.11 Non-Utilization Fees. The Co-Borrowers shall pay to the Agent for the account of each Bank in accordance with its Pro Rata Share, a non-utilization fee equal to (a) if the average daily Aggregate Amount during the most recently ended fiscal quarter was less than fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, 0.50% per annum and (b) if the average daily Aggregate Amount during the most recently ended fiscal quarter was greater than or equal to fifty percent (50%) of the average daily aggregate Commitments of the Banks in effect during such fiscal quarter, 0.375% per annum times the actual daily amount by which the aggregate Commitments exceed the Aggregate Amount; *provided* that for any day that a Bank is a Defaulting Bank hereunder, its Commitments shall be deemed to be, solely for purposes of this Section 2.11, zero. The non-utilization fees shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V are not met, and shall be due and payable quarterly in arrears within fifteen (15) days of the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Expiration Date. The non-utilization fees shall be calculated quarterly in arrears.

2.12 Computation of Fees and Interest.

(a) All computations in respect of interest at the Prime Rate shall be made on the basis of a 365/366-day year. All other computations of fees and interest shall be made on the

basis of a 360-day year and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365/366-day year). Interest and fees shall accrue during each period during which interest or such fees are computed from the first day thereof through the last day thereof.

(b) Each determination of an interest rate by the Agent shall be conclusive and binding on the Co-Borrowers.

2.13 Payments by the Co-Borrowers .

(a) All payments to be made by the Co-Borrowers shall be made without set-off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Co-Borrowers shall be made to the Agent for the account of the Banks at Agent's Payment Office, and shall be made in dollars and in immediately available funds, no later than 1:00 p.m. (New York City time) on the date specified herein. Agent will promptly distribute to each Bank its Pro Rata Share (or after the occurrence of a Sharing Event, an amount determined pursuant to the Intercreditor Agreement) of such payment in like funds as received. Any payment received by Agent later than 1:00 p.m. (New York City time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue. If and to the extent the Co-Borrowers make a payment in full to Agent no later than 1:00 p.m. (New York City time) on any Business Day and Agent does not distribute to each Bank its Pro Rata Share of such payment in like funds as received on the same Business Day, Agent shall pay to each Bank on demand interest on such amount as should have been distributed to such Bank at the Federal Funds Rate for each day from the date such payment was received until the date such amount is distributed.

(i) For any payment received by the Agent from or on behalf of the Co-Borrowers in respect of Obligations that are then due and payable (and prepayments pursuant to Section 2.06), the Agent will promptly distribute such amounts in like funds to each Bank, its Pro Rata Share of the Working Capital Loans except that any amount otherwise payable to a Defaulting Bank shall be distributed in the manner described in Section 2.16(g).

(ii) For any payment received from or on behalf of the Co-Borrowers by the Agent on or after the occurrence of a Sharing Event, the Agent will promptly distribute such payment in accordance with Section 2.01 of the Intercreditor Agreement.

(b) Subject to the provisions set forth in the definition of "Interest Period" herein, whenever any payment is due on a day other than a Business Day, such payment shall be made on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

(c) Unless Agent receives notice from the Co-Borrowers prior to the date on which any payment is due to the Banks that the Co-Borrowers will not make such payment in full as and when required, Agent may assume that the Co-Borrowers have made such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Bank on such due date an amount

equal to the amount then due such Bank. If and to the extent the Co-Borrowers have not made such payment in full to Agent, each Bank shall repay to Agent on demand such amount distributed to such Bank, together with interest thereon at the Federal Funds Rate for each day from the date such amount is distributed to such Bank until the date repaid.

2.14 Payments by the Banks to Agent . If and to the extent any Bank shall not have made its full amount available to Agent in immediately available funds and Agent in such circumstances has made available to the Co-Borrowers such amount, that Bank shall on the Business Day following such Borrowing Date make such amount available to Agent, together with interest at the Federal Funds Rate for each day during such period. A notice of Agent submitted to any Bank with respect to amounts owing under this Section 2.14 shall be conclusive, absent manifest error. If such amount is so made available, such payment to Agent shall constitute such Bank's Loan on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Borrowing Date, Agent will notify the Co-Borrowers of such failure to fund and, upon demand by Agent, the Co-Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Loans comprising such Borrowing.

2.15 Sharing of Payments, Etc. . If, other than as expressly provided elsewhere herein, any Bank shall obtain on account of the Loans made by it any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) in excess of its Pro Rata Share (or after the occurrence of a Sharing Event, an amount determined pursuant to the Intercreditor Agreement), such Bank shall immediately (a) notify Agent of such fact, and (b) purchase from the other Banks such participations in the Loans made by them as shall be necessary to cause such purchasing Bank to share the excess payment pro rata with each of them; except that with respect to any Bank that is a Defaulting Bank by virtue of such Bank failing to fund its Pro Rata Share or Pro Rata Adjusted Percentage of any Working Capital Loan or L/C Borrowing, such Defaulting Bank's pro rata share of the excess payment shall be allocated to the Bank (or the Banks, pro rata) that funded such Defaulting Bank's Pro Rata Share or Pro Rata Adjusted Percentage; *provided, however*, that if all or any portion of such excess payment is thereafter recovered from the purchasing Bank, such purchase shall to that extent be rescinded and each other Bank shall repay to the purchasing Bank the purchase price paid therefor, together with an amount equal to such paying Bank's ratable share (according to the proportion of (i) the amount of such paying Bank's required repayment to (ii) the total amount so recovered from the purchasing Bank) of any interest or other amount paid or payable by the purchasing Bank in respect of the total amount so recovered. The Co-Borrowers agree that any Bank so purchasing a participation from another Bank may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off, but subject to Section 10.09) with respect to such participation as fully as if such Bank were the direct creditor of the Co-Borrowers in the amount of such participation. Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section and will in each case notify the Banks following any such purchases or repayments.

2.16 Defaulting Bank. Notwithstanding any other provision in this Agreement to the contrary, if at any time a Bank becomes a Defaulting Bank, the following provisions shall apply so long as any Bank is a Defaulting Bank:

(a) Until such time as the Defaulting Bank ceases to be a Bank under this Agreement, it will retain its Commitment and will remain subject to all of its obligations as a Bank hereunder, although it will be presumed that such Defaulting Bank will fail to satisfy any funding obligation and, accordingly, all other Banks hereby agree to fund L/C Borrowings in accordance with the terms hereof and their respective Pro Rata Adjusted Percentage.

(b) The Fees under Section 2.11 shall cease to accrue on that portion of such Defaulting Bank's Commitment that remains unfunded or which has not been included in any L/C Obligations;

(c) A Defaulting Bank may cease to be a Defaulting Bank as specified in the definition thereof.

(d) At any time during a Default Period, Agent may and upon the direction of the Majority Banks shall, upon three (3) Business Days prior notice to the applicable Defaulting Bank (so long as such Default Period remains in effect at the end of such notice period), require such Defaulting Bank to assign all right, title and interest that it may have in all Loans and any other Obligations of the Co-Borrowers under this Agreement and the Loan Documents to another Bank (if another Bank will consent to purchase such right, title and interest) or an Eligible Assignee in accordance with Section 10.07 of this Agreement, if such Eligible Assignee can be found by the Co-Borrowers, for a purchase price equal to 100% of the principal amount of such Loans and any other Obligations plus the amount of any interest and fees accrued and owing to such Defaulting Bank as of the date of such assignment.

(e) with respect to any L/C Obligation that exists at the time a Bank becomes a Defaulting Bank or thereafter:

(i) all or any part of such Defaulting Bank's Pro Rata Share of the L/C Obligations shall be reallocated among the Non-Defaulting Banks in accordance with their respective Pro Rata Adjusted Percentage but only to the extent (x) the sum of all of the Effective Amounts of the Non-Defaulting Banks plus such Defaulting Bank's Pro Rata Share of the L/C Obligations does not exceed the Total Available Commitment, (y) any Non-Defaulting Bank's Effective Amount plus such Non-Defaulting Bank's Pro Rata Adjusted Percentage of such Defaulting Bank's Pro Rata Percentage of the L/C Obligations does not exceed such Non-Defaulting Bank's Commitment and (z) the conditions set forth in Section 5.02 of this Agreement are satisfied at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially be effected, then the Co-Borrowers shall within two (2) Business Days following notice by the Agent Cash Collateralize such Defaulting Bank's Pro Rata Share of the L/C Obligations (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the terms of this Agreement, including without limitation Section 3.07, for so long as such L/C Obligation is outstanding;

(iii) if the Co-Borrowers Cash Collateralize any portion of such Defaulting Bank's Pro Rata Share of the L/C Obligations pursuant to this Section 2.16(e) and Section 3.07 then the Co-Borrowers shall not be required to pay any fees for the pro

rata benefit of such Defaulting Bank pursuant to Section 3.08 with respect to such Defaulting Bank's Pro Rata Share of the L/C Obligations during the period such Defaulting Bank's Pro Rata Share of the L/C Obligations is Cash Collateralized; and

(iv) if any Defaulting Bank's Pro Rata Share of the L/C Obligations is neither cash collateralized nor reallocated pursuant to Section 2.16(e)(i), then, without prejudice to any rights or remedies of the Letter of Credit Issuer or any Bank hereunder, all letter of credit fees payable under this Agreement with respect to such Defaulting Bank's Pro Rata Share of the L/C Obligations shall be payable to the Issuing Banks until such Pro Rata Share of the L/C Obligations is Cash Collateralized, reallocated, or repaid in full.

(f) So long as any Bank is a Defaulting Bank, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Commitment of the Non-Defaulting Banks and/or cash collateral will be provided by Defaulting Bank or the Co-Borrowers in accordance with Section 3.07, and participating interests in any such newly issued or increased Letter of Credit shall be allocated among the Non-Defaulting Banks in a manner consistent with Section 3.03 (and the Defaulting Banks shall not participate therein).

(g) Any amount payable to such Defaulting Bank hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Bank, be retained by the Agent in a segregated account and subject to any applicable requirements of law, be applied (i) *first*, to the payment of any amounts owing by such Defaulting Bank to the Agent hereunder, (ii) *second*, to the payment of any amounts owing by such Defaulting Bank to the Issuing Banks hereunder, (iii) *third*, to the funding of cash collateralization of any participating interest in any Letter of Credit in respect of which such Defaulting Bank has failed to fund its portion thereof as required by this Agreement, as determined by the Agent or the Issuing Bank with the amount so funded reducing the amount the Co-Borrowers were required to Cash Collateralize pursuant to Section 2.16(e)(ii), (iv) *fourth*, if so determined by the Agent, the Issuing Bank and the Co-Borrowers, held in such account as cash collateral for future funding obligations of any Defaulting Bank under this Agreement, (v) *fifth*, pro rata, to the payment of any amounts owing to the Co-Borrowers or the Banks as a result of any judgment of a court of competent jurisdiction obtained by the Co-Borrowers or any Bank against such Defaulting Bank as a result of such Defaulting Bank's breach of its obligations under this Agreement and (vi) *sixth*, to such Defaulting Bank or as otherwise directed by a court of competent jurisdiction, *provided* that if such payment is a prepayment of the principal amount of any Loans or reimbursement obligations in respect of L/C Advances which a Defaulting Bank has funded in accordance with its participation obligations, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all non-Defaulting Banks *pro rata* prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Bank.

(h) In the event that the Agent, the Co-Borrowers and the Issuing Bank each agree that a Defaulting Bank has adequately remedied all matters that caused such Bank to be a Defaulting Bank, then the Pro Rata Share of the L/C Obligations of the Banks shall be readjusted to reflect the inclusion of such Bank's Commitment and on such date such Bank shall purchase

at par such of the Loans of the other Banks as the Agent shall determine may be necessary in order for such Bank to hold such Loans in accordance with its Pro Rata Share as though it were not a Defaulting Bank.

(i) No Swap Contract entered into by a Swap Bank shall benefit from the security package provided by the Security Documents, if at the time such Swap Contract was entered, such Swap Bank (or its Affiliate) was a Defaulting Bank.

(j) Notwithstanding anything to the contrary herein, the Commitment of such Defaulting Bank shall not be included for purposes of determining the "Majority Banks."

ARTICLE 3 THE LETTERS OF CREDIT

3.01 The Letter of Credit Lines.

(a) Each Issuing Bank agrees, (A) from time to time on any Business Day during the period from the Closing Date to the Expiration Date, to Issue Letters of Credit for the account of the Co-Borrowers under the Working Capital Line and to amend or renew Letters of Credit previously Issued by it, in accordance with Subsections 3.02(c) and 3.02(d), and (B) to honor drafts under the Letters of Credit. Each of the Banks will be deemed to have approved such Issuance, amendment or renewal, and shall participate in Letters of Credit Issued for the account of the Co-Borrowers. Subject to the other terms and conditions hereof, the Co-Borrowers' ability to request that an Issuing Bank Issue Letters of Credit shall be fully revolving, and, accordingly, the Co-Borrowers may, during the foregoing period, request that Issuing Bank Issue Letters of Credit to replace Letters of Credit which have expired or which have been drawn upon and reimbursed. The parties hereto agree that effective as of the Closing Date, the Existing Letters of Credit shall be deemed to have been issued and maintained under, and to be governed by the terms and conditions of, this Agreement and shall constitute a portion of the L/C Obligations.

(b) No Issuing Bank shall Issue any Letter of Credit unless Agent shall have received notice of the request for Issuance of such Letter of Credit and Agent shall have consented to the Issuance of such Letter of Credit, such consent not to be unreasonably withheld, conditioned or delayed. Additionally, no Issuing Bank shall Issue any Letter of Credit if:

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

(ii) such Issuing Bank has received written notice from the Agent or the Co-Borrowers, on or prior to the Business Day prior to the requested date of Issuance of such Letter of Credit, that one or more of the applicable conditions contained in Article V is not then satisfied;

(iii) the expiry date of any requested Letter of Credit is after the earlier to occur of (A) the expiry date of the applicable L/C Sub-limit Cap for such Letter of Credit or (B) 365 days after the Expiration Date, unless all the Banks have approved such expiry date in writing;

(iv) the expiry date of any such requested Letter of Credit is prior to the maturity date of any financial obligation to be supported by the requested Letter of Credit;

(v) such requested Letter of Credit is not in form and substance acceptable to such Issuing Bank, or the Issuance of such requested Letter of Credit shall violate any applicable policies of Issuing Bank;

(vi) such Letter of Credit is for the purpose of supporting the Issuance of any letter of credit by any other Person other than another Co-Borrower;

(vii) such Letter of Credit is denominated in a currency other than Dollars;

(viii) the amount of such requested Letter of Credit, plus the Effective Amount of L/C Obligations relating to Letters of Credit Issued under a particular L/C Sub-limit Cap exceeds the applicable L/C Sub-limit Cap;

(ix) the amount of such requested Letter of Credit, plus the Effective Amount of all of the L/C Obligations, plus the Effective Amount of all Working Capital Loans exceeds the lesser of (A) the Borrowing Base Advance Cap determined as of the date of such request on the basis of the Collateral Position Report most recently received by the Agent pursuant to Section 7.02(b) two (2) Business Days prior to the date on which the requested Letter of Credit is to be Issued, or (B) the aggregate Commitments of the Banks, or, if a Defaulting Bank exists hereunder, the Total Available Commitments;

(x) the amount of such Letter of Credit would result in exposure of an Issuing Bank to exceed its Issuing Bank Sub-Limit.

(c) Any Letter of Credit requested by the Co-Borrowers to be Issued hereunder may be Issued by any Issuing Bank or any Affiliate of such Issuing Bank acceptable to the Co-Borrowers, and if a Letter of Credit is Issued by an Affiliate of such Issuing Bank, such Letter of Credit shall be treated, for all purposes of this Agreement and the Loan Documents, as if it were issued by such Issuing Bank.

3.02 Issuance, Amendment and Auto-extension of Letters of Credit.

(a) Each Letter of Credit Issued hereunder shall be Issued upon the irrevocable written request of HoldCo pursuant to a Notice of Borrowing in the applicable form attached hereto as Exhibit A-1 received by an Issuing Bank and the Agent by no later than 12:00 p.m. noon (New York City time) on the proposed date of Issuance. Each such request for Issuance of a Letter of Credit shall be by electronic transfer or facsimile, confirmed immediately in an original writing or by electronic transfer, in the form of an L/C Application, and shall specify in form and detail satisfactory to such Issuing Bank: (i) the proposed date of Issuance of the Letter of Credit (which shall be a Business Day); (ii) the face amount of the Letter of Credit; (iii) the expiry date of the Letter of Credit; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by the beneficiary of the Letter of Credit in case of any drawing thereunder; (vi) the full text of any certificate to be presented by the beneficiary in case of any drawing thereunder; and (vii) such other matters as such Issuing Bank may require.

(b) From time to time while a Letter of Credit is outstanding and prior to the Expiration Date, an Issuing Bank will, upon the written request of HoldCo received by such Issuing Bank (with a copy sent by HoldCo to Agent) prior to 12:00 p.m. noon (New York City time) on the proposed date of amendment, consider the amendment of any Letter of Credit issued by it. Each such request for amendment of a Letter of Credit shall be made by electronic transfer or facsimile, confirmed immediately in an original writing or by electronic transfer, made in the form of an L/C Amendment Application and shall specify in form and detail satisfactory to such Issuing Bank and Agent: (i) the Letter of Credit to be amended; (ii) the proposed date of amendment of the Letter of Credit (which shall be a Business Day); (iii) the nature of the proposed amendment; and (iv) such other matters as such Issuing Bank may require. Such Issuing Bank shall be under no obligation to amend any Letter of Credit.

(c) Unless a Co-Borrower has previously notified an Issuing Bank not to do so, if any outstanding Letter of Credit Issued by an Issuing Bank shall provide that it shall be automatically extended unless the beneficiary thereof is sent a notice from such Issuing Bank that such Letter of Credit shall not be extended, and if at the time of extension such Issuing Bank would be entitled to authorize the automatic extension of such Letter of Credit in accordance with this Subsection 3.02(c), then such Issuing Bank shall be permitted to allow such Letter of Credit to auto-extend, and the Co-Borrowers and the Banks hereby authorize such extension, and, accordingly, such Issuing Bank shall be deemed to have received instructions from the Co-Borrowers requesting such extension.

(d) Any Issuing Bank may, at its election, deliver any notices of termination or other communications to any Letter of Credit beneficiary or transferee, and take any other action as necessary or appropriate, at any time and from time to time, in order to cause the expiry date of such Letter of Credit to be a date not later than the Expiration Date.

(e) This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(f) Each Issuing Bank will deliver to Agent a true and complete copy of each Letter of Credit or amendment to or renewal of a Letter of Credit Issued by it.

3.03 Risk Participations, Drawings, Reducing Letters of Credit and Reimbursements.

(a) Immediately upon the Issuance of each Letter of Credit Issued by Issuing Bank (including in the case of each Existing Letter of Credit, the deemed issuance with respect thereto on the Closing Date), each Bank shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from such Issuing Bank a participation in such Letter of Credit and each drawing or Reducing L/C Borrowing thereunder in an amount equal to the product of (i) the Pro Rata Share of such Letter of Credit (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.03, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable), times (ii) the maximum amount available to be drawn under such Letter of Credit and the amount of such drawing or Reducing Letter of Credit Borrowing, respectively. For purposes of Section 2.01, each Issuance of a Letter of Credit shall be deemed to utilize the Commitment of each Bank by an amount equal to the amount of such participation.

(b) In the event of any request for a drawing under a Letter of Credit Issued by an Issuing Bank by the beneficiary or transferee thereof, such Issuing Bank will promptly notify HoldCo. Any notice given by an Issuing Bank or Agent pursuant to this Subsection 3.03(b) may be oral if immediately confirmed in writing (including by facsimile); *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice. The Co-Borrowers shall reimburse an Issuing Bank prior to 5:00 p.m. (New York City time), on each date that any amount is paid by such Issuing Bank under any Letter of Credit or to the beneficiary of a Reducing Letter of Credit in the form of a Reducing L/C Borrowing (each such date, an “Honor Date”), in an amount equal to the amount so paid by such Issuing Bank. In the event the Co-Borrowers fail to reimburse such Issuing Bank for the full amount of any drawing under any Letter of Credit or of any Reducing L/C Borrowing, as the case may be, by 5:00 p.m. (New York City time) on the Honor Date, such Issuing Bank will promptly notify Agent and Agent will promptly notify each Bank thereof, and HoldCo shall be deemed to have requested that Working Capital Loans be made by the Banks to be disbursed to such Issuing Bank not later than one (1) Business Day after the Honor Date under such Letter of Credit, subject to the amount of the unutilized portion of the Working Capital Line.

(c) In the event of any request for a Reducing L/C Borrowing by HoldCo in association with any Reducing Letter of Credit, the amount available for drawing under such Reducing Letter of Credit will be reduced automatically, and without any further amendment or endorsement to such Reducing Letter of Credit, by the amount actually paid to such beneficiary, notwithstanding the fact that the payment creating such Reducing L/C Borrowing is not made pursuant to a conforming and proper draw under the corresponding Reducing Letter of Credit.

(d) Each Bank shall upon any notice pursuant to Subsection 3.03(b) make available to Agent for the account of any Issuing Bank an amount in Dollars and in immediately available funds equal to its Pro Rata Share (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.03, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable) of the amount of the drawing or of the Reducing L/C Borrowing, as the case may be, whereupon the participating Banks shall (subject to Subsection 3.03(e)) each be deemed to have made a Working Capital Loan to the Co-Borrowers

in that amount. If any Bank so notified fails to make available to Agent for the account of Issuing Bank the amount of such Bank's Pro Rata Share (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.03, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable) of the amount of the drawing or of the Reducing L/C Borrowing, as the case may be, by no later than 3:00 p.m. (New York City time) on the Business Day following the Honor Date, then interest shall accrue on such Bank's obligation to make such payment, from the Honor Date to the date such Bank makes such payment, at a rate per annum equal to the Federal Funds Rate in effect from time to time during such period. Agent will promptly give notice of the occurrence of the Honor Date, but failure of Agent to give any such notice on the Honor Date or in sufficient time to enable any Bank to effect such payment on such date shall not relieve such Bank from its obligations under this Section 3.03.

(e) With respect to any unreimbursed drawing or Reducing L/C Borrowing, as the case may be, that is not converted into Working Capital Loans in whole or in part for any reason, the Co-Borrowers shall be deemed to have incurred from the relevant Issuing Bank an L/C Borrowing in the amount of such drawing or Reducing L/C Borrowing, as the case may be, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at a rate per annum equal to the Default Rate, and each Bank's payment to Issuing Bank pursuant to Subsection 3.03(d) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Bank in satisfaction of its participation obligation under this Section 3.03.

(f) Each Bank's obligation in accordance with this Agreement to make the Working Capital Loans or L/C Advances, as contemplated by this Section 3.03, as a result of a drawing under a Letter of Credit or Reducing L/C Borrowing, shall be absolute and unconditional and without recourse to the relevant Issuing Bank and shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defense or other right which such Bank may have against such Issuing Bank, the Co-Borrowers or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default, an Event of Default or a Material Adverse Effect; or (iii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

3.04 Repayment of Participations.

(a) Upon (and only upon) receipt by Agent for the account of an Issuing Bank of immediately available funds from the Co-Borrowers (i) in reimbursement of any payment made by such Issuing Bank under a Letter of Credit or in connection with a Reducing L/C Borrowing with respect to which any Bank has paid Agent for the account of such Issuing Bank for such Bank's participation in the Letter of Credit pursuant to Section 3.03 or (ii) in payment of interest thereon, Agent will pay to each Bank, in the same funds as those received by Agent for the account of such Issuing Bank, the amount of such Bank's Pro Rata Share (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.03, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable) of such funds, and such Issuing Bank shall receive the amount of the Pro Rata Share of such funds of any Bank that did not so pay Agent for the account of such Issuing Bank.

(b) If Agent or an Issuing Bank is required at any time to return to the Co-Borrowers, or to a trustee, receiver, liquidator, custodian, or any official in any Insolvency Proceeding, any portion of the payments made by the Co-Borrowers to Agent for the account of such Issuing Bank pursuant to Subsection 3.04(a) in reimbursement of a payment made under a Letter of Credit or in connection with a Reducing L/C Borrowing or interest or fee thereon, each Bank shall, on demand of such Issuing Bank, forthwith return to Agent or such Issuing Bank the amount of its Pro Rata Share (or, if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Section 3.03, with respect to any Non-Defaulting Bank, its Pro Rata Adjusted Percentage, if applicable) of any amounts so returned by Agent or such Issuing Bank plus interest thereon from the date such demand is made to the date such amounts are returned by such Bank to Agent or such Issuing Bank, at a rate per annum equal to the Federal Funds Rate in effect from time to time.

3.05 Role of the Issuing Banks.

(a) Each Bank and the Co-Borrowers agree that, in paying any drawing under a Letter of Credit or funding any Reducing L/C Borrowing, no Issuing Bank shall have any responsibility to obtain any document (other than any sight draft or certificates expressly required by such Letter of Credit, but with respect to Reducing Letter of Credit Borrowings, no document of any kind need be obtained) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document.

(b) No Agent Related Person, Issuing Bank or Bank shall be liable for: (i) any action taken or omitted in the absence of gross negligence or willful misconduct; or (ii) the due execution, effectiveness, validity or enforceability of any L/C-Related Document.

(c) The Co-Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the Co-Borrowers from pursuing such rights and remedies as they may have against the beneficiary or transferee at law or under any other agreement. No Affiliate of any Issuing Bank or Bank, nor any of the respective correspondents, participants or assignees of any Issuing Bank or Bank shall be liable or responsible for any of the matters described in clauses (a) through (g) of Section 3.06; *provided, however*, anything in such clauses or elsewhere herein to the contrary notwithstanding, that the Co-Borrowers may have a claim against an Issuing Bank or a Bank, and such Issuing Bank or Bank may be liable to the Co-Borrowers, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Co-Borrowers which the Co-Borrowers prove were caused by such Issuing Bank or Bank's willful misconduct or gross negligence or such Issuing Bank or such Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate (s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing: (i) an Issuing Bank may accept documents that appear on their face to be in substantial compliance with the terms of the applicable Letter of Credit, without responsibility for further investigation, regardless of any notice or information to the contrary; and (ii) an Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

3.06 Obligations Absolute. The Obligations of the Co-Borrowers under this Agreement and any L/C-Related Document to reimburse an Issuing Bank for a drawing under a Letter of Credit or for a Reducing L/C Borrowing, and to repay any L/C Borrowing and any drawing under a Letter of Credit or Reducing L/C Borrowing converted into Working Capital Loans, shall be joint and several, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement and each such other L/C-Related Document under all circumstances, including the following:

(a) any lack of validity or enforceability of this Agreement or any L/C-Related Document;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations of the Co-Borrowers in respect of any Letter of Credit or any other amendment or waiver of or any consent to departure from all or any of the L/C-Related Documents;

(c) the existence of any claim, set-off, defense or other right that the Co-Borrowers may have at any time against any beneficiary or any transferee of any Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by the L/C-Related Documents or any unrelated transaction;

(d) any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit;

(e) any payment by Issuing Bank under any Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of any Letter of Credit; or any payment made by any Issuing Bank under any Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of any Letter of Credit, including any arising in connection with any Insolvency Proceeding;

(f) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any other guarantee, for all or any of the Obligations of the Co-Borrowers in respect of any Letter of Credit; or

(g) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Co-Borrowers.

Notwithstanding anything to the contrary in this Section 3.06, no Issuing Banks shall be excused from liability to the Co-Borrowers to the extent of any direct damages (as opposed to consequential, indirect and punitive damages, claims in respect of which are hereby waived by the Co-Borrowers) suffered by the Co-Borrowers that are caused by such Issuing Bank's gross negligence or willful misconduct when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, *provided, however*, that the parties hereto expressly agree that:

(i) the Issuing Banks may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit;

(ii) the Issuing Banks shall have the right, in their sole discretion, to decline to accept documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit;

(iii) this sentence shall establish the standard of care to be exercised by the Issuing Banks when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable law, any standard of care inconsistent with the foregoing).

3.07 Cash Collateral Pledge. Upon the request of the Agent, (a) if an Issuing Bank has honored any full or partial drawing request on any Letter of Credit and such drawing has resulted in an L/C Borrowing hereunder, (b) if, as of the Expiration Date, any Letters of Credit may for any reason remain outstanding and partially or wholly undrawn or (c) upon the occurrence of an Event of Default (and automatically without any requirement for notice or a request upon the occurrence of the events described in Sections 8.01(e) or (f)), the Co-Borrowers shall immediately Cash Collateralize the L/C Obligations in an amount equal to one hundred and five percent (105%) of such L/C Obligations. Upon the occurrence of the circumstances described in Section 2.07(b) requiring the Co-Borrowers to Cash Collateralize Letters of Credit, the Co-Borrowers shall immediately Cash Collateralize the L/C Obligations in an amount equal to the applicable excess.

3.08 Letter of Credit Fees.

(a) The Co-Borrowers shall pay to Agent, for the account of each of the Banks, a letter of credit fee with respect to each of the Letters of Credit Issued hereunder equal to the greater of (i) \$750.00 per quarter, or (ii) an amount equal to the applicable Letters of Credit Fee Rate for the number of days such Letter of Credit is outstanding, calculated on a 360-day basis, taking into consideration all increases, decreases or extensions thereto. Such amount shall be computed on a quarterly basis in arrears as of the last Business Day of each fiscal quarter based upon each Letter of Credit outstanding during that fiscal quarter and only for the days each such Letter of Credit is outstanding during that fiscal quarter as calculated by the Agent.

(b) The Co-Borrowers shall pay to the Agent for the account of each Issuing Bank issuing a Letter of Credit hereunder, a negotiation fee equal to \$250.00 for each Letter of Credit that is presented to such Issuing Bank for payment.

(c) The Co-Borrowers shall pay to the Agent for the account of each Issuing Bank issuing a Letter of Credit hereunder, an amendment fee equal to \$150.00 for each amendment to any Letter of Credit Issued hereunder.

(d) The Co-Borrowers shall pay to Agent, for the account of each of the Issuing Banks, a letter of credit fronting fee with respect to each of the Letters of Credit Issued hereunder by such Issuing Bank equal to 0.15% per annum for the number of days such Letter of Credit is outstanding, calculated on a 360-day basis, taking into consideration all increases, decreases or extensions thereto. Such amount shall be computed on a quarterly basis in arrears as of the last Business Day of each fiscal quarter based upon each Letter of Credit outstanding during that fiscal quarter and only for the days each such Letter of Credit is outstanding during that fiscal quarter as calculated by the Agent and payable quarterly in arrears.

(e) The Co-Borrowers shall pay to each Issuing Bank, for its own account, an out-of-pocket fee of \$50.00 in connection with the issuance or amendment of each Letter of Credit.

(f) Such letter of credit fees as described in sub-paragraph (a) and (b) above for each Letter of Credit shall be due and payable quarterly in arrears on the later to occur of (i) the fifth Business Day of the fiscal quarter for the preceding fiscal quarter during which Letters of Credit are outstanding, or (ii) two (2) Business Days after receipt of the invoice delivered to the Co-Borrowers by the Agent for such fees, but in no event later than the Expiration Date.

3.09 Applicable Rules . When a Letter of Credit is issued, at the option of the Issuing Bank, the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce (the “ICC”) at the time of issuance or the International Standby Practices 1998 published by the Institute of International Banking and Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Letter of Credit.

ARTICLE 4 TAXES, YIELD PROTECTION AND ILLEGALITY

4.01 Taxes .

(a) Any and all payments by the Loan Parties under this Agreement or any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by a Requirement of Law. If any Requirement of Law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by an applicable withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Co-Borrowers

shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Co-Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse the Agent for the payment of, any Other Taxes.

(c) The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Co-Borrowers by a Bank (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Bank, shall be conclusive absent manifest error.

(d) Each Bank shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Bank (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Bank's failure to comply with the provisions of Section 10.08(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Bank, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Bank by the Agent shall be conclusive absent manifest error. Each Bank hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Bank under any Loan Document or otherwise payable by the Agent to the Bank from any other source against any amount due to the Agent under this paragraph (d).

(e) Within 30 days after the date of any payment by the Co-Borrowers of Indemnified Taxes or Other Taxes, the Co-Borrowers shall furnish the Banks the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to the Banks.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 4.01 (including by the payment of additional amounts pursuant to this Section 4.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to

such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Each party's obligations under this Section 4.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

4.02 Increased Costs and Reduction of Return .

(a) If a Bank determines that, due to either (i) the introduction of or any change after the date hereof in or in the interpretation of any law or regulation or (ii) the compliance by the Bank with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) issued after the date hereof, there shall be any increase in the cost to the Bank in the cost of agreeing to make or making, funding or maintaining any Loans or to Issue, Issuing or maintaining any Letter of Credit or unpaid drawing under any Letter of Credit, then the Co-Borrowers shall be liable for, and shall from time to time, upon demand, pay to such Bank, additional amounts as are sufficient to compensate such Bank for such increased costs.

(b) If a Bank shall have determined that (i) the introduction of any guideline, request, directive, law, rule or regulation effective after the date hereof, (ii) any change in any guideline request, directive, law, rule or regulation after the date hereof, (iii) after the date hereof, any change in the interpretation or administration of any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy or liquidity of the Bank or of any corporation controlling the Bank, or (iv) the compliance by the Bank (or its lending office) or any corporation controlling the Bank with any such guideline request, directive, law, rule or regulation effective after the date hereof, affects or would affect the amount of capital or liquidity required or expected to be maintained by the Bank or any corporation controlling the Bank and (taking into consideration the Bank's or such corporation's policies with respect to capital adequacy and liquidity and the Bank's desired return on capital) determines that the amount of such capital or liquidity is increased as a consequence of its loans, credits or obligations under this Agreement (excluding for the purposes of this Section 4.02 any such increased costs or reduction in amount resulting from Excluded Taxes under the laws of which such Bank or Issuing Bank is organized or has its lending office), then, upon demand of such Bank to the Co-Borrowers, the Co-Borrowers shall pay to such Bank, from time to time as specified by such Bank, additional amounts sufficient to compensate such Bank for such increase.

Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law for purposes of this Section 4.02, regardless of the date enacted, adopted or issued.

4.03 Compensation for Losses. Upon demand of any Bank (with a copy to the Agent) from time to time, the Co-Borrowers shall promptly compensate such Bank for and hold such Bank harmless from any loss, cost or expense incurred by it as a result of:

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

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

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefore as a result of a request by any Co-Borrower pursuant to Section 10.16;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by the Co-Borrowers to the Banks under this Section 4.03, each Bank shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank Eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

4.04 Illegality.

(a) If any Bank determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for such Bank or its applicable Lending Office to make Eurodollar Rate Loans, then, on notice thereof by such Bank to the Co-Borrowers through the Agent, any obligation of that Bank to make Eurodollar Rate Loans or to convert Base Rate Loans or COF Rate Loans to Eurodollar Rate Loans shall be suspended until the Bank notifies the Agent and the Co-Borrowers that the circumstances giving rise to such determination no longer exist.

(b) If a Bank determines that it is unlawful to maintain any Eurodollar Rate Loan, the Co-Borrowers shall, upon receipt of notice of such fact and demand from such Bank (with a copy to the Agent), prepay in full, without premium or penalty, such Eurodollar Rate Loans of that Bank then outstanding, together with interest accrued thereon either on the last day of the Interest Period thereof, if the Bank may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if the Bank may not lawfully continue to maintain such Eurodollar Rate Loan. If the Co-Borrowers are required to so prepay any Eurodollar Rate Loan, then concurrently with such prepayment, the Co-Borrowers may, but shall not be required to, borrow from the affected Bank, in the amount of such repayment, a Base Rate Loan at the sole discretion of the Co-Borrowers.

4.05 Inability to Determine Rates. If (a) the Agent (or any Bank) determines in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (i) Dollar deposits are not being offered to banks (or such Bank) in the applicable offshore Dollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or adequate and reasonable means do not exist for determining the Eurodollar Rate for such Eurodollar Rate Loan, or (ii) if the Agent (or any Bank) determines that the Eurodollar Rate for such Eurodollar Rate Loan does not adequately and fairly reflect the cost to the Banks (or such Bank) of funding such Eurodollar Rate Loan, or (b) the Agent (or any Bank) determines in connection with any request for a COF Rate Loan or a conversion to or continuation thereof that that the COF Rate for such COF Rate Loan does not adequately and fairly reflect the cost to such Banks of funding such COF Rate Loan, then the Agent will promptly notify the Co-Borrowers and all Banks. Thereafter, the obligation of the Banks to make or maintain Eurodollar Rate Loans or COF Rate Loans, as applicable, shall be suspended until all of the Banks revoke such notice. Upon receipt of such notice, the Co-Borrowers may revoke any pending request for a Borrowing, conversion, or continuation of Eurodollar Rate Loans or COF Rate Loans, as applicable, or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans or COF Rate Loans, as applicable, in the amount specified therein.

4.06 Reserves on Eurodollar Rate Loans. The Co-Borrowers shall pay to each Bank, as long as such Bank shall be required under regulations of the FRB to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities"), additional costs on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by the Bank (as determined by the Bank in good faith, which determination shall be conclusive), payable on each date on which interest is payable on such Loan, *provided, however*, that the Co-Borrowers shall have received at least 15 days' prior written notice (with a copy to the Agent) of such additional interest from the Bank. If a Bank fails to give notice 15 days prior to the relevant Interest Payment Date, such additional interest shall be payable 15 days from receipt of such notice.

4.07 Certificates of Bank. If a Bank claims reimbursement or compensation under this Article IV, it shall deliver to the Co-Borrowers a certificate setting forth in reasonable detail the amount payable to such Bank hereunder and the basis for same and such certificate shall be conclusive and binding on the Co-Borrowers in the absence of manifest error.

4.08 Survival. The agreements and Obligations of the Co-Borrowers in this Article IV shall survive the payment of all other Obligations.

ARTICLE 5
CLOSING ITEMS

5.01 Matters to be Satisfied Prior to Initial Request for Extension of Credit. The obligations of each Bank to make the initial Loan or any Issuing Bank to issue the initial Letter of Credit, shall be subject to the conditions precedent that:

(a) Loan Documents. The Agent shall have received this Agreement, the Notes, the Security Documents (in recordable form where applicable), UCC financing statements, UCC-3 financing statement amendments and assignments, the Intercreditor Agreement, the Guaranty Agreement and each other document or certificate executed in connection with this Agreement, executed by each party thereto;

(b) Resolution; Incumbency. The Agent shall have received:

(i) Copies of the resolutions of each Loan Party authorizing the transactions contemplated hereby, certified as of the Closing Date by a Responsible Officer of such Loan Party; and

(ii) A certificate of a Responsible Officer of each Loan Party certifying the names and true signatures of any Responsible Officers of such Loan Party who are authorized to act on behalf of each Loan Party.

(c) Organization Documents; Good Standing. The Agent shall have received the certificate of incorporation, certificate of formation, or certificate of limited partnership, as applicable, of each Loan Party as in effect on the Closing Date, each certified by the Secretary of State of each such Person's state of organization, the bylaws, regulations, operating agreement or partnership agreement, as applicable, of each Loan Party, each certified as of the Closing Date, and evidence satisfactory to the Agent, that each Loan Party is in good standing under the laws of its state of organization;

(d) Legal Opinion. The Agent shall have received an opinion of outside Texas and New York counsel to the Loan Parties addressed to the Agent and the Banks, in form and substance acceptable to the Agent;

(e) Payment of Fees. The Agent shall have received evidence of payment by the Co-Borrowers of all fees, costs and expenses to the extent then due and payable on or prior to the Closing Date, together with Attorney Costs and including, without limitation, the fees set forth in Schedule I to the engagement letter dated as of May 5, 2014 among the Co-Borrowers and SG Americas Securities, LLC and any such costs, fees and expenses arising under or referenced in Section 10.04, without duplication;

(f) Certificate. The Agent shall have received a certificate signed by a Responsible Officer of Parent and each Co-Borrower, dated as of the Closing Date, in the form attached hereto as Exhibit F, or in any other form acceptable to the Agent.

(g) Filings. The Agent shall have received evidence that all filings needed to perfect the security interests granted by the Loan Documents have been completed or due provision has been made therefor and that all previous filings against any portion of the Collateral (other than Permitted Liens) have been terminated;

(h) Pro Forma Financial Statements. The Agent shall have received pro forma Consolidated and consolidating financial statements of Parent and its Subsidiaries as of March 31, 2014 together with a funds flow memorandum for the transactions contemplated hereby to occur on the Closing Date, including the IPO and the IPO Restructuring, in form and substance satisfactory to the Agent;

(i) Know Your Customer. The Agent shall have received all documentation and other information requested by the Agent, any Issuing Bank, or any Bank that is required by regulatory authorities under applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act;

(j) Insurance. Agent shall have received evidence of insurance required to be maintained by the Loan Parties hereunder, which certificates shall name the Agent as additional insured and loss payee, as applicable;

(k) Collateral Position Report. Agent shall have received a pro-forma Collateral Position Report as of May 31, 2014 giving effect to the IPO and the IPO Restructuring that has been duly executed by a Responsible Officer;

(l) Risk Management Policy and Credit Policy. Agent shall have received copies of the Risk Management Policy and Credit Policy in form and substance satisfactory to Agent.

(m) Capital Structure; Consummation of IPO and IPO Restructuring. The capital and ownership structure and the equity-holder arrangements of the Loan Parties and their respective Subsidiaries (and all agreements relating thereto) shall be in the form set forth in the IPO Restructuring Documents. The Agent shall have received evidence, in form and substance satisfactory to the Agent, of (i) the consummation of the IPO in accordance with the Prospectus and (ii) the consummation of the IPO Restructuring in accordance with the IPO Restructuring Documents.

(n) IPO Restructuring Documents. The Agent shall have received copies of the IPO Restructuring Documents, each in substantially the same form as the applicable exhibits attached to the Registration Statement, and such other documents, governmental certificates and agreements in connection with the IPO as the Agent or any Bank may reasonably request, certified as of the Closing Date by an authorized officer of the Parent (x) as being true and correct copies of such documents and (y) as being in full force and effect.

(o) Existing Credit Agreement. The Agent shall have received evidence, in form and substance satisfactory to the Agent, that (i) contemporaneously with the making of the initial Loan hereunder, the Existing Credit Agreement is being paid in full and terminated and (ii) all obligations, liabilities and Liens of each Loan Party and each Subsidiary thereof relating to the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) have been released and terminated or arrangements satisfactory to the Agent in its sole discretion shall have been made with respect to such release and termination.

(p) Existing Letters of Credit. The Agent shall have received letter of credit applications or amendments to the Existing Letters of Credit, as applicable, and such other documents and instruments of transfer as the Agent and each applicable Issuing Bank deem necessary to effectuate the deemed issuance of the Existing Letters of Credit hereunder

(q) Due Diligence. The Agent shall have completed and be satisfied in its sole discretion with the corporate (or other organizational), environmental and financial due diligence of the Loan Parties and their respective Subsidiaries.

(r) Notice of Borrowing. The Agent shall have received a duly completed and signed Notice of Borrowing for the initial Loan to be made on the Closing Date.

(s) Other Documents. The Agent shall have received such other approvals, opinions, documents or materials as the Agent may request.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EACH OF THE FOREGOING CONDITIONS PRECEDENT IS SATISFIED ON OR PRIOR TO THE DATE WHICH IS 90 DAYS AFTER THE DATE HEREOF.

For purposes of determining compliance with the conditions specified in this Section 5.01, each Bank that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Bank unless the Agent shall have received notice from such Bank prior to the Closing Date specifying its objection thereto.

5.02 Matters to be Satisfied Prior to Each Request for Extension of Credit. On any date on which the Banks make any Loans or Issue any Letter of Credit hereunder, unless otherwise waived by the Banks, each of the following shall be true:

(a) Representations and Warranties. Each of the representations and warranties made by the Loan Parties in or pursuant to this Agreement or the other Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date (except to the extent such representations and warranties relate solely to an earlier date).

(b) Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extension of credit requested to be made on such date.

(c) No Material Adverse Effect. Since the Closing Date, there shall have been no Material Adverse Effect.

(d) No Prohibition or Penalty. The making of such Loan or the Issuance of such Letter of Credit shall not be prohibited by any applicable law or subject the Agent, any Issuing Bank or any Bank to any penalty under applicable law.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

Parent and each Co-Borrower represents and warrants to the Banks that:

6.01 Corporate Existence and Power.

(a) Each Loan Party is a corporation, limited liability company or limited partnership, as applicable, duly formed and validly existing under the laws of its state of formation.

(b) Each Loan Party has the power and authority and all governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and to execute, deliver, and perform its Obligations under the Loan Documents and to consummate the IPO and the IPO Restructuring and is licensed under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such license, except for those jurisdictions in which the failure to obtain such licenses and authorizations could not reasonably be expected to have a Material Adverse Effect.

6.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of this Agreement and each other Loan Document to which such Loan Party is party and the consummation of the IPO and the IPO Restructuring, have been duly authorized by all necessary corporate, limited liability company, or partnership action, as applicable, and do not and will not contravene, conflict with or result in any breach or contravention of, or the creation of any Lien under any of such Loan Party's organizational and governing documents, or any document evidencing any contractual obligation to which such Loan Party is a party or any order, injunction, writ or decree of any Governmental Authority to which such Loan Party or its property is subject or any Requirement of Law, to the extent any such contravention, conflict or breach has or could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

6.03 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for filings, recordation or similar steps necessary to perfect the Liens of the Agent under applicable law.

6.04 Binding Effect. This Agreement and each other Loan Document to which each Loan Party is a party constitute the legal, valid and binding obligations of such Loan Party except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

6.05 Litigation. There are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of each Loan Party, threatened or contemplated, at law, in equity, in

arbitration or before any Governmental Authority, against any Loan Party or any of its properties which purport to affect or pertain to this Agreement or any other Loan Document, the IPO or the IPO Restructuring, or any of the transactions contemplated hereby or thereby or which could reasonably be expected to have a Material Adverse Effect; and no injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document or the consummation of the IPO or the IPO Restructuring, or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

6.06 No Default. No Default or Event of Default exists or would result from the incurring of any Obligations by any Loan Party and no Loan Party in default under or with respect to any other obligation in any respect which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect.

6.07 Compliance with Laws and Agreements. Except as could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, each Loan Party, before and after giving effect to this Agreement, is in compliance with laws applicable to such entity, including all requirements of ERISA. No Loan Party is in default under or with respect to any contract, agreement, lease or any other types of agreement or instrument to which such Loan Party is a party and which could reasonably be expected to cause a Material Adverse Effect.

6.08 Use of Proceeds: Margin Regulations. The proceeds of the Loans are to be used solely for the purposes set forth in and permitted by Section 7.07. No Co-Borrower is generally engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock, and none of the proceeds of the Loans will be used to purchase or carry Margin Stock.

6.09 Title to Properties. Each Loan Party has good and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. As of the Closing Date, the property of each Loan Party is subject to no Liens except Permitted Liens.

6.10 Taxes. Each Loan Party has filed all federal and other material Tax returns and reports to be filed, and has paid all federal and other material Taxes, assessments, fees and other governmental charges, levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed Tax assessment against any Loan Party that would, if made, have a Material Adverse Effect on the Loan Parties, taken as a whole.

6.11 Financial Condition.

(a) The Consolidated and consolidating financial statements of Parent and its Subsidiaries (x) dated December 31, 2013, and statements of income or operations, shareholders' equity and cash flows for the year ended on that date and (y) dated March 31, 2014, and statements of income or operations, shareholders' equity and cash flows for the three month period ended on that date:

(i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(ii) fairly present the financial condition of the Loan Parties and their subsidiaries as of the dates thereof and results of operations for the periods covered thereby, subject to normal year-end adjustments in the case of the financial statements dated March 31, 2014; and

(iii) except as set forth on Schedule 6.11, show all material indebtedness and other liabilities, direct or contingent, of the Loan Parties and their Subsidiaries as of the dates thereof, including liabilities for Taxes, material commitments and contingent obligations.

(b) Since December 31, 2013, there has been no Material Adverse Effect.

6.12 Environmental Matters. Except to the extent such violation could not reasonably be expected to have a Material Adverse Effect, to each Loan Party's knowledge neither its business operations nor any of its properties are in violation of any federal or state law or regulation relating to the protection of the environment (hereinafter "Environmental Laws"), including without limitation requirements to obtain, maintain, and comply with any permits, licenses, registrations, or other authorizations under Environmental Laws. No claims of any nature have been filed, or to the Loan Parties' knowledge threatened, against any Loan Party pursuant to any Environmental Law that could reasonably be expected to have a Material Adverse Effect. Except to the extent such release(s) could not reasonably be expected to have a Material Adverse Effect, to the knowledge of the Loan Parties, no release of hazardous substances or other pollutants (as those terms are defined by Environmental Laws) has occurred in connection with the Loan Parties' business or operations. Except as could not be reasonably expected to have a Material Adverse Effect, to the Loan Parties' knowledge, the Loan Parties are not subject to any liabilities under Environmental Law or relating to releases of hazardous substances or pollutants.

6.13 Regulated Entities. No Loan Party, nor any Person controlling any Loan Party, or any of its subsidiaries, is an "Investment Company" within the meaning of the Investment Company Act of 1940. No Loan Party is subject to any Requirement of Law limiting its ability to incur indebtedness or perform its obligations hereunder.

6.14 Copyrights, Patents, Trademarks and Licenses, etc. Each Loan Party owns or is licensed or otherwise has the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other rights that are reasonably necessary for the operation of its business, without conflict with the rights of any other Person. To the best knowledge of each Loan Party, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party infringes upon any rights held by any other Person, to the extent such failure to own, license or possess the right to use has or could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

6.15 Subsidiaries. No Loan Party has any Subsidiaries or has any equity investments in any other corporation or entity other than those specifically disclosed on Schedule 6.15.

6.16 Insurance. The properties of each Loan Party and its subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of a Loan Party with an AM Best rating of not less than “B+”, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party operates.

6.17 Full Disclosure. None of the representations or warranties made by any Loan Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Loan Party in connection with the Loan Documents (including the offering and disclosure materials delivered by or on behalf of any Loan Party to the Agent and the Banks prior to the Closing Date and the Prospectus), the IPO or the IPO Restructuring, when taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

6.18 [Reserved].

6.19 [Reserved].

6.20 [Reserved].

6.21 Deposit and Hedging Brokerage Accounts. Each of the Loan Parties’ bank depository accounts and securities accounts and each of the Loan Parties’ hedging brokerage accounts with Eligible Brokers is listed on Schedule 6.21.

6.22 Solvency. None of the Loan Parties is “insolvent” (that is, the sum of such Person’s absolute and contingent liabilities, including the Obligations, does not exceed the fair market value of such Person’s assets, including any rights of contribution, reimbursement or indemnity). Each Loan Party has capital which is adequate for the businesses in which such Person is engaged and intends to be engaged. None of the Loan Parties has incurred (whether hereby or otherwise), nor do the Loan Parties intend to incur or believe that they will incur, liabilities which will be beyond their respective ability to pay as such liabilities mature.

6.23 ERISA. Except for those that would not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the knowledge of any Loan Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Loan Party has incurred or otherwise has or could have an obligation or any liability and (z) no ERISA Event is reasonably expected to occur. Except for those that would

not, in the aggregate, have a Material Adverse Effect, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. Except for those that would not, in the aggregate, have a Material Adverse Effect, no ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made. Except for those that would not, in the aggregate, have a Material Adverse Effect, no ERISA Affiliate has incurred any liability under Title IV of ERISA that remains outstanding (other than PBGC premiums due but not delinquent).

6.24 Transmitting Utility and Utility. None of the Loan Parties is a “transmitting utility”, as that term is defined in the Uniform Commercial Code of any applicable jurisdiction, or a “utility”, as that term is defined in Section 261.001 of the Texas Business and Commerce Code.

6.25 Sanctions. No Loan Party, any of their Subsidiaries or, to the knowledge of the Loan Parties, any director, officer, employee, agent, or affiliate of any Loan Party or any of their Subsidiaries is a Person that is, or is owned or controlled by Persons that are: (i) the subject or target of any sanctions administered or enforced by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority (collectively, “Sanctions”), or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions.

ARTICLE 7 CERTAIN COVENANTS

So long as the Banks shall be obligated to make Loans or Issue Letters of Credit hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding:

7.01 Financial Statements. Parent and each of the Co-Borrowers shall deliver to the Agent, in form and detail satisfactory to the Agent and the Majority Banks:

(a) as soon as possible, but not later than 120 days after the end of each fiscal year (or, if earlier, not later than 15 days after delivering such financial statements to the SEC), a copy of the audited Consolidated and consolidating financial statements of Parent (which include the Co-Borrowers) to include a balance sheet as at the end of such year and the related statements of income and loss, shareholders’ equity and cash flows for such year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the opinion of a nationally-recognized independent public accounting firm which report shall state that such financial statements present fairly the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years. Such opinion shall not be qualified or limited because of a restricted or limited examination by the public accounting firm of any material portion of Co-Borrowers’ records;

(b) as soon as available, but not later than forty-five (45) days after the end of each fiscal quarter (except for each fiscal quarter ending December 31, which shall be delivered no later than sixty (60) days after the end of such fiscal quarter) (or, if earlier, not later than 5

days after delivering such financial statements to the SEC) unaudited Consolidated and consolidating financial statements of Parent (which include the Co-Borrowers) prepared by Parent in form acceptable to the Agent; and

(c) as soon as available, but not later than forty-five (45) days after the end of each January, February, April, May, July, August, October and November, an unaudited summary level Consolidated income statement of Parent (which include the Co-Borrowers) for such month and for the current year to date, together with a summary of all dividends, distributions and other payments made pursuant to Section 7.15(c) and (e) during such period, in each case, prepared by Parent in form acceptable to the Agent.

7.02 Certificates; Other Information. Parent and the Co-Borrowers shall furnish to the Agent and shall notify the Agent of:

(a) (i) concurrently with the delivery of the financial statements referred to in Subsections 7.01(a) and (b), a Compliance Certificate executed by a Responsible Officer of Parent, who is authorized to act on behalf of each of the Loan Parties, setting forth in reasonable detail the basis for the calculations and determinations made therein; provided, however, that if at any time any Loan Party anticipates mark-to-market losses for Product, which such losses are not reflected on the Compliance Certificate most recently delivered to the Banks, then Parent and the Co-Borrowers shall, by the Business Day following the day such Co-Borrower realizes such losses are expected, deliver to the Banks an additional Compliance Certificate which shall reflect such anticipated losses and (ii) concurrently with the delivery of the financial statements referred to in Subsection 7.01(c), a certificate in form and substance acceptable to the Agent executed by a Responsible Officer of Parent, who is authorized to act on behalf of each of the Loan Parties, certifying that as of the date of such financial statements, the Loan Parties are in compliance with the financial covenants in Section 7.09;

(b) on the last day of each month, delivered within ten (10) Business Days of the reporting date, a Collateral Position Report, certified by a Responsible Officer of HoldCo, who is authorized to act on behalf of the Loan Parties, and at such other times as the Agent may request; *provided, however*, if the excess Collateral Position as shown on the most recent Collateral Position Report is less than the greater of \$10,000,000 and 10% of clause (b) of the Borrowing Base Advance Cap, then Collateral Position Reports shall be delivered on the 15th and last day of each month, delivered within ten (10) Business Days of the reporting date, until such time as the excess Collateral Position is equal to or greater than the greater of \$10,000,000 and 10% of clause (b) of the Borrowing Base Advance Cap (in which case reporting will revert to the last day of each month);

(c) as of the last day of each month (or the next succeeding Business Day after such date in the event that such date is not a Business Day), delivered within ten (10) Business Days of the reporting date, a Net Position Report, certified by a Responsible Officer of HoldCo, who is authorized to act on behalf of each of the Loan Parties;

(d) within 90 days of the end of each calendar quarter, with respect to Unbilled Qualified Accounts, a reconciliation setting forth estimated volumes and gross sales revenues versus actual volumes and gross sales revenues for such period, in a form acceptable to Agent;

(e) within 15 days of the end of each calendar quarter (or within 15 days of when requested by Agent following the occurrence and during the continuance of an Event of Default), an accounts receivable aging analysis, in a form reasonably acceptable to Agent;

(f) as soon as reasonably possible after a written request is made by Agent from time to time, such additional information regarding the business, financial or corporate affairs of any Loan Party;

(g) within ten (10) Business Days of each calendar quarter end, a report of inventory storage locations as of such quarter end;

(h) as soon as available and in any event within 30 days after the end of each fiscal year of the Parent, the Co-Borrowers shall provide to the Agent an annual budget summary in the form of an income statement for the immediately following fiscal year and detailed on a quarterly basis;

(i) promptly of the occurrence of any Default or Event of Default, and of the occurrence or existence of any event or circumstance that foreseeably will become a Default or Event of Default;

(j) promptly of any matter that has resulted or may reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a contractual obligation of any Loan Party; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party, in the case each of clauses (i), (ii) and (iii), which has resulted or may reasonably be expected to result in a Material Adverse Effect;

(k) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, and (ii) promptly, and in any event within 10 days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that an ERISA Event has occurred;

(l) within fifteen (15) Business Days after the Chief Executive Officer of any Loan Party ceases to hold such office;

(m) within two Business Days after making a public filing with the SEC with respect to those activities requiring a public filing or as soon as available with respect to those activities in which no public filing is made, the Co-Borrowers shall provide to the Agent copies of each amendment or modification to, waiver of, or consent to departure from, the Risk Management Policy or the Credit Policy; and

(n) promptly after the same are available, the Co-Borrowers shall make available to the Agent copies of each annual report, proxy or financial statement or other material report or communication sent to the holders of Equity Interests of the Parent, and copies of all

annual, regular, periodic and special reports and registration statements which the Loan Parties may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or any other securities Governmental Authority, and not otherwise required to be delivered to the Agent pursuant hereto.

Each notice under clauses (i)-(m) of this Section shall be accompanied by a written statement by a Responsible Officer of Parent, who is authorized to act on behalf of the Loan Parties setting forth details of the occurrence referred to therein, and stating what action such Loan Party proposes to take with respect thereto and at what time. Each notice under Subsection 7.02(i) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been (or foreseeably will be) breached or violated.

7.03 Insurance.

(a) Each Loan Party shall maintain, with financially sound and reputable insurers independent of any Loan Party and with an AM Best rating of not less than "B+", insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including, without limitation, cargo insurance. Agent shall be named as an additional insured and/or loss payee under all such policies, without liability for premiums or club calls. Each Loan Party shall use the standard of care typical in the industry in the operation and maintenance of its facilities.

(b) Each Loan Party shall obtain flood insurance in such total amount as the Agent may from time to time require, if at any time the area in which a Building located on any real property encumbered by a mortgage in favor of Agent is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.

7.04 Payment of Obligations. Each Loan Party shall, and shall cause each of its Subsidiaries to, pay and discharge, as the same shall become due and payable, all its material obligations and liabilities, including, without limitation, Taxes, except for such obligations and liabilities that are being diligently contested in good faith by appropriate proceedings.

7.05 Compliance with Laws. Each Loan Party shall, and shall cause each of its Subsidiaries to, comply, in all material respects, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business, including, without limitation, the Federal Fair Labor Standards Act, ERISA, the Foreign Corrupt Practices Act, and the rules and regulations promulgated by OFAC, except such as may be contested in good faith or as to which a bona fide dispute may exist or which the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

7.06 Inspection of Property and Books and Records and Audits. Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain proper books and records in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all

financial transactions and matters involving the assets and business of such Person. Each Loan Party shall, and shall cause each of its Subsidiaries to, permit representatives and independent contractors of the Agent to visit and inspect any of its respective properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its respective affairs, finances and accounts with its respective directors, officers, and independent public accountants, all at the expense of such Loan Party and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to such Loan Party; *provided*, *however*, when an Event of Default exists the Agent may do any of the foregoing at the expense of such Loan Party at any time during normal business hours and without advance notice. At such times as the Agent deems advisable, each Loan Party will, and will cause each of its Subsidiaries to, allow the Agent or an entity satisfactory to the Agent to conduct a thorough examination of the Collateral Position, and such Loan Party will, and will cause each of its Subsidiaries to, fully cooperate in such examination. Such Loan Party will pay the costs and expenses of each such examination. Notwithstanding the foregoing, in the absence of an Event of Default, Agent shall not request more than one borrowing base collateral audit in any 12-month period.

7.07 Use of Proceeds.

(a) Co-Borrowers shall use the proceeds of the Working Capital Line for the purposes of (i) refinancing certain obligations under the Existing Credit Agreement allocable to Spark and SEG, (ii) financing such Co-Borrowers' working capital requirements related to the trading and marketing of Product, (iii) general corporate purposes, (iv) funding distributions to the holders of Equity Interests of the Parent and HoldCo permitted by Section 7.15(c), and (v) paying any costs, fees and expenses due hereunder.

(b) No proceeds of any Credit Extension shall be used, directly or indirectly, to purchase or carry Margin Stock.

7.08 Payments to Bank Blocked Accounts.

(a) Each Co-Borrower shall, if such Co-Borrower receives payments from account debtors in the ordinary course of business, establish and maintain a lock box ("Lock Box") through the Wells Fargo Bank Blocked Account, the SEG Bank Blocked Account or the Spark Bank Blocked Account, as applicable, or at another depository institution acceptable to the Agent, and shall notify in writing and otherwise take such reasonable steps to ensure that all of its account debtors under any of its Accounts forward payment under such Accounts in the form of cash, checks, drafts or other similar items of payment directly to such Lock Box or directly by wire transfer to the SEG Bank Blocked Account, or the Spark Bank Blocked Account, as applicable, and shall provide Agent with reasonable evidence of such notification. Any payment in the form of cash, checks, drafts or similar items of payment received by any Co-Borrower in its Lock Box or otherwise shall be deposited into the Wells Fargo Bank Blocked Account, SEG Bank Blocked Account or Spark Bank Blocked Account, as applicable, no later than two Business Days following the date on which the applicable Co-Borrower receives such payment.

(b) In the event that any account debtor does not make any payment directly to the applicable Lock Box or the applicable Bank Blocked Account but instead makes such

payment to a Loan Party, such Loan Party shall promptly deposit or cause to be deposited such amounts into the applicable Bank Blocked Account as soon as reasonably possible after receipt thereof.

(c) Agent may at any time following the occurrence of an Event of Default initiate the “Activation Period” or other analogous defined term (as defined in the Blocked Account Agreements) and thereafter all amounts deposited in the Bank Blocked Accounts shall be transferred as directed by the Agent. Co-Borrowers agree that, during the Activation Period, (a) no monies shall be withdrawn or otherwise transferred from any Bank Blocked Account without the Agent’s approval and (b) Agent is authorized to apply amounts contained in the Bank Blocked Accounts toward satisfaction of the Obligations.

7.09 Financial Covenants.

(a) Net Working Capital. The Net Working Capital of Parent and its Subsidiaries, on a Consolidated basis, shall at all times equal or be greater than the greater of (i) 20% of the aggregate Commitments in effect at such time and (ii) \$12,000,000.

(b) Tangible Net Worth. The Tangible Net Worth of Parent and its Subsidiaries, on a Consolidated basis, shall at all times equal or be greater than (i) the net book value of PP&E on the Closing Date, plus (ii) the greater of (A) 20% of the aggregate Commitments in effect at such time and (B) \$12,000,000.

(c) Leverage Ratio. Parent shall not at any time permit the ratio of (i) all Indebtedness of Parent and its Subsidiaries, on a Consolidated basis, at such time (excluding Subordinated Debt permitted by Section 7.13(c)) to (ii) Tangible Net Worth of Parent and its Subsidiaries, on a Consolidated basis, at such time to be more than 7.00 to 1.00.

(d) Right to Cure. In the event that the Co-Borrowers fail to comply with the financial covenants set forth in subsections (a), (b) or (c) above by an amount not exceeding twenty percent (20%) of the then-required applicable covenant level for any calendar month, until the expiration of the third (3rd) Business Day subsequent to the date on which monthly financial statements are required to be delivered pursuant to Section 7.01 (the “Cure Period”), the Co-Borrowers shall be permitted to cure such failure to comply by way of receiving Cure Contributions, and upon the date on which the Cure Period expires, such covenants shall be recalculated giving effect to the Cure Contributions. Solely for the purpose of curing a financial covenant, any such Cure Contributions shall be included in the calculation of Net Working Capital or Tangible Net Worth, as applicable, for the most recently ended month. If, after giving effect to the foregoing recalculations, Co-Borrowers shall then be in compliance with the requirements of such covenants, Co-Borrowers shall be deemed to have satisfied the requirements of such covenants as of the relevant earlier required date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of any such covenant that had occurred shall be deemed cured for the purposes of this Agreement and the other Loan Documents. Co-Borrowers shall provide Agent with notice of intent to exercise their right to cure contained in this subsection within 45 days of the end of the calendar month for which the cure is sought. Notwithstanding anything to the contrary contained this Agreement, from the date of receipt of such notice until the date on

which the Cure Period expires, neither Agent nor any Bank shall exercise rights or remedies with respect to any Default or Event of Default solely on the basis that an Event of Default has occurred and is continuing under Section 7.09(a), (b) or (c). The Cure Contributions must be received no later than the end of the applicable Cure Period. In any rolling twelve month period, there shall be no more than two (2) Cure Contributions permitted, and no more than three (3) Cure Contributions shall be permitted during the term of this Agreement.

7.10 Limitation on Liens. The Loan Parties shall not, nor shall the Loan Parties suffer or permit any of their Subsidiaries to make, create, incur, assume or suffer to exist any Lien upon or with respect to any part of its property, whether now owned or hereafter acquired, other than

(a) any Lien existing on property of the Loan Parties on the date hereof and set forth in Schedule 7.10;

(b) any Lien created under any Loan Document;

(c) Liens for Taxes, fees, assessments or other governmental charges or levies which are not delinquent or remain payable without penalty or the validity of which is being diligently contested in good faith by appropriate proceedings (and fully reserved for on the books of such Person to the extent such item is material);

(d) Liens on POR Collateral;

(e) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person, and Liens of interest owners arising pursuant to Texas Bus. & Com. Code Section 9.343, or comparable law of other states, or Liens securing the Loan Parties' obligations under leases or deferred payment purchases of equipment and automobiles used in the Loan Parties' business;

(f) non-consensual statutory Liens arising in the ordinary course of the Loan Parties' business to the extent such Liens secure indebtedness which is not past due or such Liens secure indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or are being contested in good faith by appropriate proceedings diligently pursued and available to such Loan Party prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books;

(g) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of real property which do not interfere in any material respect with the use of such real property or ordinary conduct of the business of the Loan Parties as presently conducted thereon or materially impair the value of the real property which may be subject thereto;

(h) pledges and deposits of cash by any Loan Party in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security benefits consistent with the current practices of such Loan Party;

(i) pledges and deposits of cash by any Loan Party after the date hereof to secure the performance of tenders, bids, leases, trade contracts (other than for the repayment of indebtedness), public or statutory obligations, surety bonds, performance bonds and other similar obligations in each case in the ordinary course of business consistent with the current practices of such Loan Party;

(j) Liens arising from operating leases and the precautionary UCC financing statement filings in respect thereof and equipment or other materials which are not owned by any Loan Party located on the owned or leased premises of such Loan Party (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and the precautionary UCC financing statement filings in respect thereof;

(k) judgments and other similar Liens arising in connection with court proceedings that do not constitute an Event of Default, *provided*, that, such Liens are being contested in good faith and by appropriate proceedings diligently pursued, adequate reserves or other appropriate provision, if any, as are required by GAAP have been made therefor and a stay of enforcement of any such Liens is in effect;

(l) Liens granted by any Loan Party on its or their rights under any insurance policy, but only to the extent that such Lien is granted to the insurers under such insurance policies or any insurance premium finance company to secure payment of the premiums and other amounts owed to the insurers or such premium finance company with respect to such insurance policy;

(m) 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; and

(n) Liens by way of cash collateral under and as provided for in Master Agreements such as NAESB Gas Contracts, EEI Master Agreements, ISDA Master Agreements, or similar types of agreements provided the aggregate outstanding amount of cash collateral does not exceed \$30,000,000 (all of the foregoing collectively, "Permitted Liens").

7.11 Fundamental Changes. The Loan Parties shall not, nor suffer or permit any of their Subsidiaries to, merge, consolidate with or into, liquidate or dissolve, or convey, transfer, lease or otherwise Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except (a) as permitted pursuant to Section 7.19 and (b) if no Default or Event of Default has occurred and is continuing, the merger of any Co-Borrower into any other Co-Borrower; *provided that*, the surviving Co-Borrower executes and delivers to Agent all additional security documentation as the Agent may reasonably require in order to reaffirm the security interest of the Agent for the benefit of the Secured Parties in the Collateral.

7.12 Loans, Investments and Acquisitions. The Loan Parties shall not, nor suffer or permit any of their Subsidiaries to (without the consent of Agent), purchase or acquire or make any commitment therefor, any equity interest, or any obligations or other securities of, or any interest in, any Person or make or commit to make any acquisitions, or make or commit to make

any advance, loan, extension of credit (other than pursuant to sales on open account in the ordinary course of any Loan Party's business) or capital contribution to or any other investment in, any Person, except:

(a) the endorsement of instruments for collection or deposit in the ordinary course of business;

(b) investments in cash or cash equivalents, *provided*, that, subject to Section 7.21, Agent shall have been granted a valid enforceable first priority security interest with respect to the deposit account, investment account or other account in which such cash or cash equivalents are held;

(c) loans and advances by any Loan Party to employees of such Loan Party for: (i) reasonably and necessary work-related travel or other ordinary business expenses to be incurred by such employee in connection with their work for such Loan Party, (ii) reasonable and necessary relocation expenses of such employees, and (iii) hardship situations being experienced by any such employee(s); *provided* that the aggregate amount of (i), (ii) and (iii) above does not exceed \$1,000,000 at any one time outstanding;

(d) stock or obligations issued to any Loan Party by any Person (or the representative of such Person) in respect of indebtedness of such Person owing to such Loan Party in connection with the insolvency, bankruptcy, receivership or reorganization of such Person or a composition or readjustment of the debts of such Person; *provided*, that, the original of any such stock or instrument evidencing such obligations shall be promptly delivered to Agent, together with such stock power, assignment or endorsement by such Loan Party in order to perfect the security interest of Agent and the Banks in any such stock or instrument;

(e) obligations of account debtors to any Loan Party arising from Accounts which are past due that are evidenced by a promissory note made by such account debtor payable to such Loan Party; *provided*, that, promptly upon the receipt of the original of any such promissory note by such Loan Party, such promissory note shall be endorsed to the order of Agent by such Loan Party and promptly delivered to Agent as so endorsed in order to perfect the security interest of Agent and the Banks in any such promissory note;

(f) loans by a Loan Party to another Loan Party after the date hereof, *provided*, that, as to all of such loans, (i) within thirty (30) days after the end of each fiscal year, the Co-Borrowers shall provide to Agent a report in form and substance satisfactory to Agent of the outstanding amount of such loans as of the last day of such year, (ii) the indebtedness arising pursuant to any such loan shall not be evidenced by a promissory note or other instrument, unless the original of such note or other instrument is promptly delivered to Agent to hold as part of the Collateral, with such endorsement and/or assignment by the payee of such note or other instrument as Agent may require, (iii) as of the date of any such loan and after giving effect thereto, the Loan Party making such loan shall be solvent, and (iv) as of the date of any such loan and after giving effect thereto, no Event of Default shall have occurred and be continuing;

(g) investments (other than loans) of any Loan Party in another Loan Party;

(h) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit or prepayments or similar transactions entered into in the ordinary course of business, and investments received in satisfaction or partial satisfaction thereof from financial troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(i) investments consisting of non-cash consideration for any Dispositions permitted under this Agreement, *provided* that such investments become subject to the first priority, perfected liens created under the Loan Documents;

(j) Equity Investments in any Person that is not a Loan Party, *provided* that:

(i) no Default or Event of Default has occurred and is continuing at the time of such Equity Investment; and

(ii) no single Equity Investments may exceed \$10,000,000 without the prior written consent of the Agent; and

(iii) such Equity Investments plus outstanding Affiliate Obligations may not exceed \$15,000,000 in the aggregate at any time outstanding without the prior written consent of the Majority Banks;

(k) Permitted Acquisitions; *provided that* ,

(i) if the purchase price of such Permitted Acquisition is greater than \$5,000,000, prior to the consummation of any Permitted Acquisition, the Co-Borrowers shall deliver to Agent (A) a valuation model specific to such Permitted Acquisition detailing historical performance metrics and reasonably detailed projections for the succeeding two years pertaining to the Person or business to be acquired and updated projections for the Loan Parties after giving effect to such Permitted Acquisition, (B) copies of all material documentation pertaining to such Permitted Acquisition, (C) all such other information and data relating to such Permitted Acquisition or the Person or business to be acquired as may be reasonably requested by the Agent; and (D) at least 5 Business Days (or such lesser period as is reasonably acceptable to the Agent) prior to the proposed date of consummation of the Permitted Acquisition, the Co-Borrowers shall have delivered to the Agent a certificate of a Responsible Officer certifying that (1) such acquisition is a Permitted Acquisition, including calculations in form and substance satisfactory to the Agent reflecting pro forma compliance with the financial covenants in Section 7.09, and (2) such Permitted Acquisition could not reasonably be expected to result in a Material Adverse Effect; and

(ii) if the purchase price of such Permitted Acquisition is less than or equal to \$5,000,000, at least one Business Day (or such lesser period as is reasonably acceptable to the Agent) prior to the proposed date of consummation of the Permitted Acquisition, the Co-Borrowers shall have delivered to the Agent a certificate of a Responsible Officer certifying that (1) such acquisition is a Permitted Acquisition and (2) such Permitted Acquisition could not reasonably be expected to result in a Material Adverse Effect;

(l) Loans to Affiliates resulting in an Affiliate Obligation, *provided* that outstanding Affiliate Obligations plus Equity Investments may not exceed \$15,000,000.00 in the aggregate at any time outstanding without the prior written consent of the Majority Banks; and

(m) Loans to Affiliates not to exceed \$1,000,000 in the aggregate at any time outstanding for general and administrative expense reimbursement.

7.13 Limitation on Indebtedness and Other Monetary Obligations . The Loan Parties shall not, nor suffer or permit any of their Subsidiaries to, create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness or other monetary obligations, including guaranties, *except for*

(a) Indebtedness and obligations incurred pursuant to this Agreement or pursuant to a Swap Contract;

(b) Indebtedness and obligations consisting of trade payables in the ordinary course of business and consistent with past practices;

(c) Subordinated Debt owed to an Affiliate of the Co-Borrowers (other than Parent and its Subsidiaries);

(d) Indebtedness and obligations existing on the date hereof and described on Schedule 7.10;

(e) purchase money Indebtedness (including Capital Leases) in a maximum principal amount not exceeding \$5,000,000 to the extent secured by purchase money security interests in automobiles and/or equipment (including Capital Leases) so long as such security interests do not apply to any property of such Loan Party other than the automobiles and equipment so acquired, and the Indebtedness secured thereby does not exceed the cost of such automobiles or equipment so acquired, as the case may be, or any refinancings, refundings, renewals or extensions thereof;

(f) guarantees by any Loan Party of the Obligations of the other Loan Parties in favor of Agent for the benefit of the Secured Parties;

(g) guarantees by any Loan Party of any Indebtedness permitted pursuant to this Section 7.13 of any other Loan Party;

(h) the Indebtedness of any Loan Party to another Loan Party pursuant to loans permitted under the terms of this Agreement;

(i) the obligations of any Loan Party or any of its Subsidiaries to pay the deferred purchase price of goods or services or progress payments in connection with such goods or services, so long as such obligations are incurred in the ordinary course of business; and

(j) other unsecured Indebtedness on terms and conditions reasonably satisfactory to the Agent in an aggregate principal amount not exceeding \$15,000,000 at any time outstanding.

7.14 Transactions with Affiliates. The Loan Parties shall not, nor suffer or permit any of their Subsidiaries to, enter into any transaction with any Affiliate of the Loan Parties that are not Loan Parties, except upon fair and reasonable terms no less favorable to any Loan Party than such Loan Party would obtain in a comparable arm's-length transaction with a Person not an Affiliate of such Loan Party, except for (a) transactions pursuant to the IPO Restructuring Documents and (b) compensation and employee benefit arrangements paid to, and awards granted thereunder, and indemnities provided for the benefit of, directors, officers, consultants and employees of the Loan Parties in the ordinary course of business.

7.15 Restricted Payments. The Loan Parties shall not, nor permit any of their Subsidiaries to, declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of their capital stock, or purchase, redeem or otherwise acquire for value any of their capital stock or any warrants, rights or options to acquire such shares, now or hereafter outstanding, or make any payments under the Tax Receivable Agreement; *except that* the Loan Parties may:

(a) declare and make dividend payments or other distributions payable solely in their common Equity Interests;

(b) purchase, redeem or otherwise acquire their common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests; and

(c) declare and make cash distributions to NuDevco Holdings, NuDevco Retail and the holders of Equity Interests of the Parent from cash on hand of HoldCo and the Parent in accordance with the organizational documents of HoldCo and the Parent, *provided* that before and immediately after giving effect to such proposed distribution, (i) no Default or Event of Default would exist, (ii) the Loan Parties are in pro forma compliance with the financial covenants in Section 7.09 and (iii) the Effective Amount of all Working Capital Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed the lesser of the aggregate of the Commitments or the Borrowing Base Advance Cap;

(d) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities to another Loan Party, or purchase, redeem or otherwise acquire for value any of their capital stock or any warrants, rights or options to acquire such shares, now or hereafter outstanding, from another Loan Party; *provided*, that no such distribution shall be declared or paid unless, immediately after giving effect to such proposed distribution, no Default or Event of Default would exist; and

(e) make payments under the Tax Receivable Agreement; *provided* that before and immediately after giving effect to such proposed payment, (i) no event or circumstance exists which, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default under Section 8.01(a), (e) or (f), (ii) the Loan Parties are in pro forma compliance with the financial covenants in Section 7.09 and (iii) the Effective Amount of all Working Capital Loans then outstanding plus the Effective Amount of all L/C Obligations does not exceed the lesser of the aggregate of the Commitments or the Borrowing Base Advance Cap.

7.16 Certain Changes. The Loan Parties shall not, nor permit any of their Subsidiaries to, engage in any material line of business substantially different from those lines of business carried on by the Loan Parties and their Subsidiaries on the date hereof. No Loan Party shall make any significant change in accounting treatment or reporting practices, except as required by GAAP or to comply with SEC accounting rules and regulations, or change the fiscal year of any Loan Party and upon any such change shall promptly notify the Agent thereof.

7.17 Net Position. If at any time the aggregate Net Position of a Loan Party exceeds the amounts set forth in the Risk Management Policy, the Loan Parties shall promptly notify the Agent, which notification shall explain the circumstances of such deviation and set forth a plan that provides in reasonable detail the actions the Loan Party proposes to take to reduce the applicable position deviation to an amount to achieve compliance with the Risk Management Policy. The Agent will, upon receipt of such notification, notify the Banks. If the Majority Banks determine in their sole discretion that such excess could reasonably be expected to have a Material Adverse Effect on the Loan Parties taken as a whole, then such failure to comply with the Risk Management Policy shall constitute an Event of Default and Agent shall promptly notify the Loan Parties of such determination. In any event, if the Loan Parties allow their aggregate Net Position to exceed the amounts set forth in the Risk Management Policy for a period exceeding three (3) Business Days, an Event of Default shall be deemed to have occurred.

7.18 Location of Inventory. The Loan Parties will not, nor permit any of their Subsidiaries to (unless approved by the Agent in writing) maintain any inventory at any location except as set forth on Schedule 7.18 unless the Loan Parties have given the Agent at least two weeks' prior notice of the transfer to or storage of inventory at such other location and prior to maintaining any inventory at such location shall have disclosed to Agent the identity of the owner of the storage facility and shall have taken all steps necessary to provide the Banks with a first priority perfected security interest in such inventory.

7.19 Disposition of Assets. The Loan Parties shall not, nor shall the Loan Parties suffer or permit any of their Subsidiaries to, directly or indirectly, sell, assign, lease, convey, transfer or otherwise Dispose of (whether in one or a series of transactions) any property (including accounts and notes receivable, with or without recourse) or enter into any agreement to do any of the foregoing, *except for* :

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

(b) Dispositions of worn-out, obsolete or surplus automobiles and/or equipment or the Disposition of automobiles and/or equipment no longer used or useful in the business of any Co-Borrower;

(c) Dispositions of accounts receivable pursuant to POR Agreements;

(d) Dispositions of accounts receivable to the insurer of such accounts receivable to the extent that one or more Co-Borrowers has account receivables insurance covering certain account receivables, subsequently makes a claim under such insurance, and the insurer of such accounts receivable requires such assignment;

(e) Dispositions in connection with sale and leaseback transactions in an amount not to exceed \$5,000,000.00 in the aggregate during any twelve (12) month period;

(f) Dispositions between Loan Parties; and

(g) Dispositions (not including Dispositions described in (a) through (f) above) in an amount not to exceed \$10,000,000.00 in the aggregate during any twelve (12) month period or \$5,000,000.00 for any single transaction; provided that (i) such Disposition is made for fair market value, (ii) before and immediately after giving effect to such Disposition, no Default or Event of Default has occurred and is continuing and (iii) before and immediately after giving effect to such Disposition, the Loan Parties are in pro forma compliance with the financial covenants in Section 7.09.

7.20 Additional Security Documentation. The Loan Parties shall, and shall cause their Subsidiaries to, execute such additional security documentation as the Agent may from time to time require in order to maintain the security interest of the Agent for the benefit of the Secured Parties in the Collateral.

7.21 Cash in Accounts Not Subject to Control Agreement. The Loan Parties and their Subsidiaries shall not have, at any time, an amount in excess of \$750,000.00, in the aggregate, in any accounts (excluding cash deposits subject to Liens permitted by Section 7.10(n)) which are not subject to a perfected security interest in favor of the Agent for the benefit of the Secured Parties by virtue of a three-party control agreement in form and substance satisfactory to the Agent.

7.22 Security for Obligations. The Loan Parties shall, and shall cause their Subsidiaries to, at all times maintain security interests in favor of the Agent for the benefit of the Secured Parties so that the Agent shall have a first priority perfected lien on all Collateral of the Loan Parties and any of their Subsidiaries, to secure the Obligations.

7.23 Subsidiaries. Each Subsidiary of any Loan Party (other than Subsidiaries which are Co-Borrowers), now existing or created, acquired or coming into existence after the date hereof, shall execute and deliver to the Agent for the benefit of the Secured Parties (i) its absolute and unconditional guaranty of the timely repayment of, and the due and punctual performance of the Obligations, which guaranty shall be in the form of the Guaranty Agreement and (ii) if requested by Agent, a joinder to the applicable Security Documents, a Blocked Account Agreement (if applicable) and such other Loan Documents as the Agent may reasonably require. Each of such Subsidiary Guarantor shall deliver to the Agent, simultaneously with its delivery of such a guaranty, written evidence satisfactory to the Agent and its counsel that such Subsidiary Guarantor has taken all corporate, limited liability company or partnership action necessary to duly approve and authorize its execution, delivery and performance of such guaranty and any Security Documents and other documents which it is required to execute. The Loan Parties shall also deliver an updated Schedule 6.15 with respect to such Subsidiary in form and substance satisfactory to Agent if new Subsidiaries are formed or otherwise acquired subsequent to the date hereof.

7.24 Modifications to Billing Services Agreements. None of the Loan Parties shall, nor permit any of their Subsidiaries to, unless consented to by the Agent, enter into any material amendment to any POR Agreement, except that the POR Agreements may be extended by a Loan Party for additional periods as long as such extensions do not result in any material changes to the terms and conditions of such POR Agreements.

7.25 [Reserved].

7.26 [Reserved].

7.27 Risk Management Policy and Credit Policy. The Loan Parties shall not make any material amendment or modification to the Risk Management Policy or the Credit Policy in a manner materially adverse to the interests of the Agent, the Issuing Banks, or the Banks, without the prior written consent of the Majority Banks. The Loan Parties and Agent agree that upon request by Agent or by the Loan Parties, from time to time, the Loan Parties and Agent will review and evaluate the Loan Parties' credit and risk management policies.

7.28 Prohibited Transactions. The Loan Parties shall not, and shall not permit any of their Subsidiaries to:

(a) (i) conduct any business or engage in making or receiving any contribution of funds, goods, or services to or for the benefit of any Person in violation of any Anti-Terrorism Law, (ii) deal in or otherwise engage in any transaction relating to any property or interests in property blocked pursuant to any Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in any Anti-Terrorism Law.

(b) directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise).

7.29 Preservation of Existence, Etc. Each Loan Party shall, and shall cause each of its Subsidiaries to (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization except in a transaction permitted by Section 7.11 and (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

7.30 Burdensome Agreements. The Loan Parties shall not, and shall not permit any of their Subsidiaries to enter into or permit to exist any contractual obligation (other than this Agreement or any other Loan Document) that limits the ability (a) of any Subsidiary of Parent to make any dividend or distribution to Parent or any other Subsidiary of Parent or to otherwise transfer property to or invest in Parent or any other Subsidiary of Parent, in each case, except for any agreement in effect (i) on the date hereof, including the IPO Restructuring Documents, or (ii)

at the time any Subsidiary becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of a Loan Party, (b) of any Loan Party to be jointly and severally liable in respect of the Obligations or any Subsidiary to guarantee the Obligations or (c) of any Loan Party or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations; provided, however, that this clause (c) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.13(e) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness.

7.31 Transmitting Utility and Utility. The Loan Parties shall not knowingly take any action which would cause any Loan Party to be treated as a “transmitting utility”, as that term is defined in the Uniform Commercial Code of any applicable jurisdiction, or as a “utility”, as that term is defined in Section 261.001 of the Texas Business and Commerce Code.

7.32 Holding Company. The Parent shall not engage in any business or activity other than (a) the ownership of Equity Interests in HoldCo, (b) maintaining its corporate existence, (c) participating in income Tax, accounting and other administrative activities as the managing member of HoldCo, (d) the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, (e) providing guarantees under Section 7.13(g), (f) making payments under the Tax Receivable Agreement, (g) performing obligations under the IPO Restructuring Documents, and (h) activities incidental to the businesses or activities described in clauses (a) through (g) of this Section 7.32, including, without limitation, the Parent’s issuance of Equity Interests.

7.33 Post-Closing Obligations. Within thirty (30) days following the Closing Date (or a later date acceptable to the Agent in its sole discretion), the Loan Parties shall deliver to the Agent copies of endorsements of the Loan Parties’ insurance policies maintained pursuant to Section 7.03 as reasonably requested by the Agent.

ARTICLE 8 EVENTS OF DEFAULT

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

(a) Non-Payment. Any Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or any L/C Borrowing or deposit any funds as Cash Collateral, or (ii) pay within three days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Representation or Warranty. Any representation or warranty made or deemed made herein, in any other Loan Document, or which is contained in any certificate, document or financial or other statement by any Loan Party, or any Responsible Officer, furnished at any time under this Agreement, or in or under any other Loan Document, is incorrect or misleading in any material respect on or as of the date made or deemed made; or

(c) Covenant Defaults. (i) Any Loan Party fails to perform any of the terms, covenants, conditions or provisions contained in any of Sections 7.07 through 7.17, 7.19, 7.24 or

7.27 through 7.32 of this Agreement or (ii) any Loan Party fails to perform any of the other terms, covenants, conditions or provisions contained in this Agreement or any of the other Loan Documents (other than those specified in Section 8.01(a) or (c)(i) above) and such failure referred to in this Section 8.01(c)(ii) shall continue unremedied for a period of three (3) Business Days after the earlier to occur of (A) notice thereof from the Agent to the Co-Borrowers (which notice will be given at the request of any Bank) or (B) a Responsible Officer otherwise becoming aware of such failure; or

(d) Cross-Default. Any of the Loan Parties or any Subsidiary of the Loan Parties, if any (i) fails to make any payment due (after giving effect to any applicable grace or cure period or waiver) in respect of any Indebtedness or contingent obligation having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$5,000,000.00 when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise); or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness or contingent obligation, if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness or contingent obligation to cause such Indebtedness or contingent obligation to be declared to be due and payable prior to its stated maturity; or

(e) Insolvency; Voluntary Proceedings. Any of the Loan Parties or any Subsidiary of the Loan Parties (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct all or substantially all of its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(f) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against any of the Loan Parties or any Subsidiary of any Loan Party, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of the Loan Parties' or any Subsidiary of any Loan Party's, properties and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) any of the Loan Parties or any Subsidiary of any Loan Party admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (iii) any of the Loan Parties or any Subsidiary of any Loan Party acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its property or business; or

(g) ERISA. The occurrence of an ERISA Event that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to subject any of the Loan Parties to liability in excess of \$2,500,000; or

(h) Monetary Judgments. One or more non-interlocutory judgments, non-interlocutory orders, decrees or arbitration awards is entered against any of the Loan Parties or any Subsidiary of any Loan Party involving in the aggregate a liability (to the extent not covered by independent third-party insurance as to which the insurer is contractually obligated to pay and which is reasonably expected to be paid by such insurer) as to any single or related series of transactions, incidents or conditions, of \$2,500,000 or more; the liability for which is not the subject of an appeal, with appropriate bond or other surety being posted to suspend the effects of any such judgments; or

(i) Non-Monetary Judgments. Any non-interlocutory non-monetary judgment, order or decree is entered against any of the Loan Parties or any Subsidiary of any Loan Party which does or would reasonably be expected to have a Material Adverse Effect; or

(j) Change of Control. At any time (i) W. Keith Maxwell III (or trusts established for the benefit of W. Keith Maxwell III or his family members which are controlled by W. Keith Maxwell III) ceases to, directly or indirectly, own more than 50% (or, if higher, at least a Controlling Percentage) of the voting Equity Interests of the Parent, (ii) the Parent ceases to be the sole managing member of HoldCo, (iii) the Parent ceases to maintain full operational and managerial control of each Co-Borrower and its Subsidiaries such that any such Person is not Consolidated with the Parent in accordance with GAAP, (iv) the Parent, NuDevco Holdings and NuDevco Retail, collectively, cease to, directly or indirectly, own 100% of the Equity Interests of HoldCo, or (v) HoldCo ceases to, directly or indirectly, own 100% of the Equity Interests of any Co-Borrower (other than HoldCo) or any Guarantor (other than Parent).

(k) Guarantor Defaults. Any Guarantor fails to perform or observe any term, covenant or agreement in the Guaranty Agreement; or the Guaranty Agreement is for any reason (other than satisfaction in full of all Obligations and the termination of the Loans) partially (including with respect to future advances) or wholly revoked or invalidated, or otherwise ceases to be in full force and effect, or any Guarantor or any other person contests in any manner the validity or enforceability thereof or denies that he has any further liability or obligation thereunder; any event described at subsections (e) or (f) of this Section occurs with respect to any Guarantor.

(l) Swap Obligations. There shall have occurred with respect to any Swap Contract to which a Co-Borrower is a party an "Event of Default" or a "Termination Event" (as defined in the applicable ISDA Master Agreement and any related Credit Support Annex or Schedule) which entitles the applicable Swap Bank to terminate the Swap Contract.

(m) Effectiveness of Loan Documents. At any time after the execution and delivery thereof, (i) this Agreement or any other Loan Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms of this Agreement or the satisfaction in full of the Obligations) or is declared (by a Governmental Authority) null and void, or Agent does not have or ceases to have a valid and perfected Lien in any Collateral purported to be covered by the Loan Documents with the priority required by the relevant Loan Document, except where the failure to have a valid and perfected Lien on any such Collateral and/or priority would not have a Material Adverse Effect on the security interest held by Agent on behalf of the Banks on all other Collateral, in each case for any reason other than

the failure of Agent to take any action within its control, or (ii) any Loan Party contests the validity or enforceability of any Loan Document in writing or denies in writing that it has any further liability, including with respect to future advances by Banks, under any Loan Document to which it is a party.

8.02 Remedies. If any Event of Default occurs, exists and is continuing, the Agent may, with the consent of the Majority Banks, or shall, at the direction of the Majority Banks:

(a) terminate the commitment of each Bank hereunder;

(b) declare an amount equal to the maximum aggregate amount that is or at any time thereafter may become available for drawing by the beneficiary under any outstanding Letters of Credit (whether or not any beneficiary shall have presented, or shall be entitled at such time to present, the drafts or other documents required to draw under such Letters of Credit), but only to the extent such amounts are not Cash Collateralized at the time, to be immediately due and payable, and declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Co-Borrowers;

(c) require the Co-Borrowers to Cash Collateralize all L/C Obligations in the manner described in Section 3.07; and

(d) exercise all rights and remedies available to it under the Loan Documents or applicable law including, without limitation, seeking to lift any stay that may be in effect under any Insolvency Proceeding;

provided, however, that upon the occurrence of any event specified in subsection (e) or (f) of Section 8.01, any obligation of the Banks to make Loans and to Issue Letters of Credit, if any, shall automatically terminate and an amount equal to the maximum aggregate amount that is or at any time thereafter may become available for drawing by the beneficiary under any outstanding Letters of Credit (whether or not any beneficiary shall have presented, or shall be entitled at such time to present, the drafts or other documents required to draw under such Letters of Credit) together with the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document shall automatically become due and payable without further act of the Banks.

8.03 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

8.04 Application of Payments. Except as expressly provided in this Agreement, all amounts thereafter received or recovered under this Agreement or any other Loan Document whether as a result of a payment by the Co-Borrowers, the exercise of remedies by the Agent under any of the Loan Documents, liquidation of collateral or otherwise, shall be applied for the benefit of the Secured Parties on a *pro rata* basis from and after the date of the occurrence of any Sharing Event as provided in Section 2.01 of the Intercreditor Agreement.

ARTICLE 9
AGENT

9.01 Appointment and Authorization.

(a) Each Bank hereby irrevocably (subject to Section 9.09) appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Bank, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” in this Agreement with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) Issuing Bank shall act on behalf of the Banks with respect to any Letters of Credit issued by it and the documents associated therewith until such time (and except for so long) as Agent may agree at the request of the Banks to act for Issuing Bank with respect thereto; *provided, however*, that Issuing Bank shall have all of the benefits and immunities (i) provided to Agent in this Article IX with respect to any acts taken or omissions suffered by Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and the application and agreements for letters of credit pertaining to the Letters of Credit as fully as if the term “Agent” as used in this Article IX included Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided herein with respect to Issuing Bank. Prior to the Issuance of a Letter of Credit or upon the payment of any drawing on a Letter of Credit by Issuing Bank other than Agent, Issuing Bank shall provide written notice to Agent of the dollar amount, the date of such Issuance of payment and the expiry date for such Letter of Credit. Such Issuance shall be subject to the consent of Agent. Such consent shall not result in the imposition of any liability upon Agent.

9.02 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.03 Liability of Agent. None of Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Banks for any recital, statement, representation or warranty made by the Co-Borrowers or any Subsidiary

or Affiliate of the Co-Borrowers, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or for the value of or title to any Collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of the Co-Borrowers or any other party to any Loan Document to perform their obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to the Banks to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Co-Borrowers or any of the Co-Borrowers' Subsidiaries or Affiliates.

9.04 Reliance by Agent.

(a) Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Loan Parties), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Banks as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Banks against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Banks and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Banks.

(b) For purposes of determining compliance with the conditions specified in Section 5.02, each Bank that has executed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent by Agent to such Bank for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to the Banks.

9.05 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of the Banks, unless Agent shall have received written notice from a Bank or the Co-Borrowers referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." Agent will notify the Banks of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by the Majority Banks in accordance with Article VIII; *provided, however*, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Banks.

9.06 Credit Decision. Each Bank acknowledges that none of Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of the Loan Parties and their Subsidiaries, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Bank. Each Bank represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, the value of and title to any Collateral, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Loan Parties hereunder. Each Bank also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to the Banks by Agent, Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Loan Parties which may come into the possession of any of Agent-Related Persons.

9.07 Indemnification. Whether or not the transactions contemplated hereby are consummated, the Banks shall indemnify upon demand Agent-Related Persons (to the extent not reimbursed by or on behalf of the Loan Parties and without limiting the obligation of the Loan Parties to do so as provided for elsewhere in this Agreement or the other Loan Documents, if so provided), pro rata in accordance with each Bank's Pro Rata Share (or if a Defaulting Bank exists, and without limitation to the obligations of such Defaulting Bank under this Agreement, with respect to each Non-Defaulting Bank, its Pro Rata Adjusted Percentage), from and against any and all Indemnified Liabilities; *provided, however*, that no Bank shall be liable for the payment to Agent-Related Persons of any portion of such Indemnified Liabilities found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from such Person's gross negligence or willful misconduct. Without limitation of the foregoing, each Bank shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of the Loan Parties. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent. THE FORGOING INDEMNITY INCLUDES AN INDEMNITY FOR THE NEGLIGENCE OF AGENT-RELATED PERSONS.

9.08 Agent in Individual Capacity. Société Générale and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business

with the Co-Borrowers and their Subsidiaries and Affiliates as though Société Générale were not Agent or Issuing Bank hereunder and without notice to or consent of the Banks. The Banks acknowledge that, pursuant to such activities, Société Générale or its Affiliates may receive information regarding the Co-Borrowers or their Affiliates (including information that may be subject to confidentiality obligations in favor of the Co-Borrowers or such Affiliates) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to its Loans, Société Générale shall have the same rights and powers under this Agreement as any other Bank and may exercise the same as though it were not Agent or Issuing Bank, and the terms “Bank” and “Banks” include Société Générale in its individual capacity.

9.09 Successor Agent. Agent may at any time and shall, if Agent becomes a Defaulting Bank, resign as Agent upon thirty (30) days' notice to the Banks. If Agent resigns under this Agreement, the Banks shall appoint, from among the Banks, a successor agent for the Banks. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Banks, a successor agent from among the Banks. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term “Agent” shall mean such successor agent and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article IX and Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Banks shall perform all of the duties of Agent hereunder until such time, if any, as the Banks appoint a successor agent as provided for above.

9.10 Foreign Banks.

(a) Any Foreign Bank that is entitled to an exemption from or reduction of U.S. withholding Tax with respect to payments made under any Loan Document shall deliver to the Loan Parties and the Agent, at the time or times reasonably requested by the applicable loan Party or the Agent, such properly completed and executed documentation reasonably requested by such Loan Party or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Foreign Bank, if reasonably requested by a Loan Party or the Agent, shall deliver such other documentation prescribed by applicable Requirements of Law or reasonably requested by such Loan Party or the Agent as will enable such Loan Party or the Agent to determine whether or not such Foreign Bank is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 9.10(b)(i), and (b)(iii) below) shall not be required if in the Foreign Bank's reasonable judgment such completion, execution or submission would subject such Foreign Bank to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Foreign Bank.

(b) Without limiting the generality of the foregoing,

(i) any Foreign Bank shall, to the extent it is legally entitled to do so, deliver to the Loan Parties and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Bank becomes a Bank under this Agreement (and from time to time thereafter upon the reasonable request of the applicable Loan Party or the Agent), whichever of the following is applicable:

(1) in the case of a Foreign Bank claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Bank claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit J-1 to the effect that such Foreign Bank is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of any Loan Party within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Bank is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-2 or Exhibit J-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Bank is a partnership and one or more direct or indirect partners of such Foreign Bank are claiming the portfolio interest exemption, such Foreign Bank may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-4 on behalf of each such direct and indirect partner;

(ii) Any Foreign Bank shall, to the extent it is legally entitled to do so, deliver to the Loan Parties and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Bank becomes a Bank under this Agreement (and from time to time thereafter upon the reasonable request of a Loan Party or the Agent), executed originals of any other form prescribed by an applicable Requirement of Law as a basis for claiming exemption from or a reduction in

U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Requirements of Law to permit the applicable Loan Party or the Agent to determine the withholding or deduction required to be made.

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

(iv) Each Foreign Bank agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Loan Parties and the Agent in writing of its legal inability to do so.

9.11 Collateral Matters.

(a) The Agent is authorized on behalf of all the Banks and the Swap Banks, without the necessity of any notice to or further consent from the Banks or the Swap Banks, from time to time to take any action with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the security interest in and Liens upon the Collateral granted pursuant to the Loan Documents.

(b) The Banks and the Swap Banks irrevocably authorize the Agent, at its option and in its discretion, to release any Lien granted to or held by the Agent upon any Collateral (i) upon termination of this Agreement, termination of all Swap Contracts with such Persons (other than Swap Contracts as to which arrangements satisfactory to the applicable counterparty in its sole discretion have been made), termination of all Letters of Credit (other than Letters of Credit as to which arrangements satisfactory to the applicable Issuing Bank in its sole discretion have been made), and the payment in full of all outstanding Obligations; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; (iii) constituting property in which the Loan Parties or any Subsidiary owned no interest at the time the Lien was granted or at any time thereafter; (iv) constituting property leased to the Loan Parties or any Subsidiary under a lease which has expired or been terminated in a transaction permitted under this Agreement or is about to expire and which has not been, and is not intended by the Loan Parties or such Subsidiary to be, renewed or extended; (v) consisting of an instrument evidencing indebtedness or other debt instrument, if the indebtedness evidenced thereby has been paid in full; (vi) in POR Collateral to

the extent the release of the Agent's Lien in such POR Collateral is required by the applicable POR Agreement or any Requirement of Law; or (vii) if approved, authorized or ratified in writing by the requisite Banks in accordance with Section 10.01. Upon request by the Agent at any time, the Banks will confirm in writing the Agent's authority to release particular types or items of Collateral pursuant to this Subsection 9.11 (b); *provided, however*, that the absence of any such confirmation for whatever reason shall not affect the Agent's rights under this Section 9.11.

9.12 Monitoring Responsibility. Each Bank will make its own credit decisions hereunder, including the decision whether or not to make advances or consent to the Issuance of Letters of Credit, thus the Agent shall have no duty to monitor the Collateral Position, the amounts outstanding under sub-lines or the reporting requirements or the contents of reports delivered by the Loan Parties. Each Bank assumes the responsibility of keeping itself informed at all times.

9.13 Swap Banks. To the extent any Affiliate of a Bank is a party to a Swap Contract with a Co-Borrower and thereby becomes a beneficiary of the Liens pursuant to the Security Documents or any other Loan Document, such Affiliate of a Bank shall be deemed to appoint the Agent its nominee and agent to act for and on behalf of such Affiliate (and the Agent hereby accepts such nomination and agrees to act as agent for such Affiliate) in connection with the Security Documents and such other Loan Documents and to be bound by the terms of this Article IX.

9.14 Other Agents; Arrangers. None of the Banks or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent," as a "documentation agent," any other type of agent (other than the Agent), "arranger," or "bookrunner" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Banks as such. Without limiting the foregoing, none of the Banks so identified shall have or be deemed to have any fiduciary relationship with any Bank. Each Bank acknowledges that it has not relied, and will not rely, on any of the Banks so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

ARTICLE 10 MISCELLANEOUS

10.01 Amendments and Waivers. Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by the Co-Borrowers or any other Loan Party therefrom, shall be effective unless in writing and signed by the Majority Banks and the Co-Borrowers and acknowledged by the Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that:

- (a) no amendment, waiver or consent shall, unless in writing and signed by all of the Banks, do any of the following at any time:
 - (i) waive any of the conditions specified in Section 5.01;

(ii) release any Guarantor, except a Guarantor that has ceased to be a Subsidiary of a Loan Party in a transaction permitted under this Agreement or release all or substantially all of the Collateral in any transaction or series of related transactions, except such releases relating to sales of property permitted under Section 9.11;

(iii) change any provision of this Section or the definition of “Majority Banks” or any other provision hereof specifying the number or percentage of Banks required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder;

(iv) amend, modify or waive the definitions of “Advance Sub-Limit Cap,” “Borrowing Base Advance Cap,” “L/C Sub-limit Caps,” “Pro Rata Share,” “Total Available Commitments,” “Pro Rata Share” or any provision of this Agreement relating to the pro rata treatment of the Banks;

(v) consent to the assignment or transfer by any Co-Borrower of any of its rights and obligations under this Agreement and the other Loan Documents;

(vi) amend, modify or waive any provisions of the Intercreditor Agreement; or

(vii) amend Section 2.15;

(b) no amendment, waiver or consent shall, unless in writing and signed by the Majority Banks and each Bank affected by such amendment, waiver or consent:

(i) increase Commitment of such Bank (or reinstate any commitment terminated pursuant to Section 8.02);

(ii) change the order of application of any prepayment set forth in Section 2.07;

(iii) reduce, forgive or waive the principal of, or interest on, the Working Capital Loans or any fees or other amounts payable hereunder to Banks;

(iv) postpone, waive or otherwise defer any date scheduled for any payment of principal of or interest on the Working Capital Loans or any fees or other amounts payable to Banks; or

(v) result in a Credit Extension in excess of the Borrowing Base Advance Cap;

and *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Bank in addition to the Banks required above and each of the Co-Borrowers, affect the rights or duties of the Issuing Bank under this Agreement or any L/C-Related Document relating to any Letter of Credit issued or to be issued by it; and (ii) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Banks required above and each of the Co-Borrowers, affect the rights or duties of the Agent under this Agreement or any other Loan Document.

10.02 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission, e-mail, electronic submissions or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of a Bank, in its administrative questionnaire provided by each such Bank to Agent, and Agent shall promptly provide such address to Co-Borrowers) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Co-Borrowers; *provided*, that notices, requests or other communications shall be permitted by e-mail or other electronic submissions only in accordance with the provisions of Section 10.2(b). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, (ii) if given by e-mail or other electronic submissions, as set forth in Section 10.2(c) or (iii) if given by mail, prepaid overnight courier or any other means, when received at the applicable address specified by this Section; *provided*, that notices pursuant to Articles II or III shall not be effective until actually received by the Banks.

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites); *provided*, that (i) the foregoing shall not apply to notices sent directly to any party hereto if such party has notified Agent that it has elected not to receive notices by electronic communication and (ii) no Notices of Borrowing or any notices regarding request for advances hereunder shall be permitted to be delivered or furnished by Co-Borrowers by electronic communication unless made in accordance with specific procedures approved from time to time by Agent.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; *provided*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

(d) Any agreement of the Banks herein to receive certain notices by telephone or facsimile is solely for the convenience and at the request of the Co-Borrowers. The Banks shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Co-Borrowers to give such notice and the Banks shall not have any liability to the Co-Borrowers or other Person on account of any action taken or not taken by the Banks in reliance upon such telephonic or facsimile notice. The obligation of the Co-Borrowers to repay the Loans

and L/C Obligations shall not be affected in any way or to any extent by any failure by the Banks to receive written confirmation of any telephonic or facsimile notice or the receipt by the Banks of a confirmation which is at variance with the terms understood by the Banks to be contained in the telephonic or facsimile notice.

(e) Parent and Co-Borrowers hereby acknowledge that (a) Agent will make available to the Banks and the Issuing Banks materials and/or information provided by or on behalf of Parent, Co-Borrowers and their Affiliates hereunder (collectively, “Borrower Materials”) by posting within a reasonable time after receipt from Parent or the Co-Borrowers such Borrower Materials on IntraLinks or another similar electronic system (the “Platform”) (or, to the extent Borrower Materials are not timely delivered to Agent, that such Borrower Materials have not yet been received by Agent) and (b) certain of the Banks (each, a “Public Bank”) may have personnel who do not wish to receive material non-public information with respect to Parent, Co-Borrowers or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. Parent and Co-Borrowers hereby agree that (c) all Borrower Materials that are to be made available to Public Banks, which are deemed by Parent and Co-Borrowers to be materials available to be released to the public, shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (d) by marking Borrower Materials “PUBLIC,” Parent and Co-Borrowers shall be deemed to have authorized Agent, the Issuing Banks and the Banks to treat such Borrower Materials as not containing any material non-public information with respect to Borrower or its securities for purposes of United States Federal and state securities laws; (e) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (f) Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information”.

(f) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF BORROWER MATERIALS (AS DEFINED BELOW) OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH BORROWER MATERIALS OR THE PLATFORM. To the fullest extent permitted by applicable law, in no event shall Agent or any of its Affiliates or their respective partners, directors, officers, employees, agents, trustees or advisors (collectively, the “Agent Parties”) have any liability to Parent, Co-Borrowers, any Bank, Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Parent’s, any Co-Borrower’s or Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of an Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to Parent, any Co-Borrower, any Bank, the Issuing Banks or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages) arising out of any such transmission.

10.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent, any Issuing Bank, or any Bank, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.04 Costs and Expenses. Parent and the Co-Borrowers shall:

(a) Whether or not the transactions contemplated hereby are consummated, pay or reimburse Agent within five (5) Business Days after demand for all reasonable costs and expenses incurred by Agent in connection with the development, preparation, delivery, administration and execution of, and any amendment, supplement, waiver or modification to (in each case, whether or not consummated), this Agreement, any Loan Document or any other documents prepared in connection herewith or therewith, and the consummation of the transactions contemplated hereby and thereby, including reasonable Attorney Costs and costs of commercial finance examinations, incurred by Agent; and

(b) Pay or reimburse the Agent, the Issuing Banks, and the Banks within five (5) Business Days after demand for all costs and expenses (including Attorney Costs) incurred by it in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement or any other Loan Document during the existence of an Event of Default or after acceleration of the Loans (including in connection with any “workout” or restructuring regarding the Loans, and including in any Insolvency Proceeding or appellate proceeding).

(c) The agreements in this Section shall survive payments of all other Obligations.

10.05 Indemnity. Whether not the transactions contemplated hereby are consummated, Parent and the Co-Borrowers, jointly and severally, shall indemnify and hold the Agent, the Banks, the Issuing Banks, and each of their Affiliates, officers, directors, employees, counsel, agents and attorneys-in-fact harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Loans and the termination of the Letters of Credit) be imposed on, incurred by or asserted against any such Person in any way relating to or arising out of this Agreement or any document contemplated by or referred to herein, or the transactions contemplated hereby, or any action taken or omitted by any such Person under or in connection with any of the foregoing, including with respect to any investigation, litigation or proceeding (including any Insolvency Proceeding or appellate proceeding) related to or arising out of this Agreement or the Loans or Letters of Credit or the use of the proceeds thereof; *provided, however*, that Parent and the Co-Borrowers shall have no obligation hereunder to any such indemnified Person with respect to any of the foregoing indemnified liabilities found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such indemnified Person. The agreements in this Section shall survive payment of all Obligations.

10.06 Joint and Several Liability of the Co-Borrowers.

(a) Each Co-Borrower states and acknowledges that: (i) pursuant to this Agreement, the Co-Borrowers desire to utilize their borrowing potential on a combined basis to the same extent possible if they were merged into a single corporate entity; (ii) each Co-Borrower has determined that it will benefit specifically and materially from the advances of credit contemplated by this Agreement; (iii) it is both a condition precedent to the obligations of the Agent and the Banks hereunder and a desire of each Co-Borrower that each Co-Borrower execute and deliver to the Agent and the Banks this Agreement; and (iv) each Co-Borrower has requested and bargained for the structure and terms of and security for the Credit Extensions contemplated by this Agreement. The board of directors or similar governing body of each Co-Borrower has determined that such Co-Borrower's execution, delivery and performance of this Agreement may reasonably be expected to directly or indirectly benefit such Co-Borrower and is in the best interests of such Co-Borrower.

(b) Each Co-Borrower hereby irrevocably and unconditionally: (i) agrees that it is jointly and severally liable to the Agent, each Issuing Bank, and the Banks for the full and prompt payment and performance of the obligations of each Co-Borrower under this Agreement that may specify that a particular Co-Borrower is responsible for a given payment or performance; (ii) agrees to fully and promptly perform all of its obligations hereunder with respect to each advance of credit hereunder as if such advance had been made directly to it; and (iii) agrees as a primary obligation to indemnify the Agent, each Issuing Bank, and each Bank, on demand, for and against any loss incurred by the Agent, any Issuing Bank, or any Bank as a result of any of the Obligations of any Co-Borrower being or becoming void, voidable, unenforceable or ineffective for any reason whatsoever, whether or not known to such Co-Borrower or any Person, the amount of such loss being the amount which the Agent, the Issuing Banks, or the Banks (or any of them) would otherwise have been entitled to recover from the Co-Borrowers.

(c) The direct or indirect value of the consideration received and to be received by any Co-Borrower in connection herewith is reasonably worth at least as much as the liability and obligations of each such Co-Borrower hereunder and the incurrence of such liability and Obligations in return for such consideration may reasonably be expected to benefit such Co-Borrower, directly or indirectly.

10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Co-Borrowers may not assign or transfer any of their rights or Obligations under this Agreement without the written consent of the Banks.

(b) The Agent, acting solely for this purpose as an agent of the Co-Borrowers, shall maintain a register for the recordation of the names and addresses of the Banks, and the

Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Bank pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and each Co-Borrower, the Agent and the Banks shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Bank hereunder for all purposes of this Agreement.

(c) Notwithstanding anything to the contrary contained herein, (i) if at any time any Issuing Bank assigns all of its Loans pursuant to Section 10.08, then such Issuing Bank shall, upon 30 days’ notice to the Co-Borrowers and the Banks, and (ii) any Issuing Bank may, upon 30 days’ prior written notice to the Co-Borrowers and the Banks, resign as an Issuing Bank. In the event of any such resignation as an Issuing Bank, the Co-Borrowers shall be entitled to appoint from among the Banks a successor Issuing Bank to such Issuing Bank hereunder; provided, however, that no failure by the Co-Borrowers to appoint any such successor shall affect the resignation of such Issuing Bank. Such Issuing Bank shall retain all the rights and obligations of an Issuing Bank hereunder with respect to (i) all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and (ii) all L/C Obligations with respect to such Letters of Credit (including the right to require the Banks to make Loans or fund participations in L/C Obligations pursuant to Section 3.03).

10.08 Assignments, Participants, etc.

(a) Each Bank, at any time, may, subject to the consent of the Agent and each Issuing Bank, and, so long as no Event of Default has occurred and is continuing, the Co-Borrowers, such consent not to be unreasonably withheld, assign and delegate all, or any ratable part of all, of the rights and obligations of such Bank hereunder to one or more Eligible Assignees; *provided, however*, that the consent of the Co-Borrowers shall not be required with respect to an assignment from a Bank to one or more of its Affiliates or with respect to the assignment from one Bank to another Bank; *provided, further*, that (i) any such disposition shall not, without the prior consent of the Co-Borrowers, require the Co-Borrowers to apply to register or qualify the Loans or any Note under the securities laws of any state, (ii) Co-Borrowers and the Agent may continue to deal solely and directly with such Bank in connection with the interest so assigned to an Eligible Assignee until (x) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Eligible Assignee, shall have been given to the Co-Borrowers and the Agent by such Bank and the Eligible Assignee; (y) such Bank and its Eligible Assignee shall have delivered to the Co-Borrowers and the Agent an Assignment and Assumption (“Assignment and Assumption”) in form attached hereto as Exhibit I, together with any Note or Notes subject to such assignment; and (z) the assignor Bank or Eligible Assignee has paid to the Agent a processing fee in the amount of \$3,500 (other than in the case of an assignment to an Affiliate of the assigning Bank) and (iii) each such assignment to an Eligible Assignee (other than any Bank) shall be in an aggregate principal amount of \$5,000,000 or a whole multiple in excess thereof (other than in the case of (A) an assignment of all of a Bank’s interests under this Agreement or (B) an assignment to an Affiliate of the assigning Bank), and *provided, further*, that such an assignment may not be made to any Co-Borrower or an Affiliate thereof.

(b) From and after the date that a Bank gives such notice to the Co-Borrowers, (i) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations

hereunder have been assigned to it pursuant to an Assignment and Assumption agreement, shall have the rights and obligations of a Bank under the Loan Documents, and (ii) the assignor Bank shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under the Loan Documents.

(c) The Co-Borrowers shall execute and deliver new Notes evidencing such assignee's assigned Loans and the Commitment, and, if the assignor Bank has retained a portion of its Loans and the Commitment, replacement Notes in the principal amount of the Loans and the Commitment retained by the assignor Bank (such Notes to be in exchange for, but not in payment of, the Notes held by the Bank). Upon receipt by the applicable Banks of the new Notes, the applicable Banks shall promptly deliver the original Notes to the Co-Borrowers. This Agreement shall be amended to the extent, but only to the extent, necessary to reflect the addition of the assignee and the resulting adjustment of the Commitment arising therefrom. The Commitment of allocated to each assignee shall reduce such Commitment of the assigning Bank *pro tanto* .

(d) Each Bank may at any time sell to one or more commercial banks or other Persons not Affiliates of the Co-Borrowers (each, a "Participant") participating interests in any Loans and the Commitment of such Bank and the other interests of such Bank (the "Originating Bank") hereunder and under the other Loan Documents; *provided, however*, that the Co-Borrowers shall continue to deal solely and directly with the Originating Bank in connection with the Originating Bank's rights and obligations under this Agreement and the other Loan Documents.

Any agreement or instrument pursuant to which a Originating Bank sells such a participation shall provide that such Originating Bank shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Originating Bank will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 10.01(a), (b), (c), (d) or (e) that affects such Participant. Each Co-Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.01, 4.02 and 4.03 (subject to the requirements and limitations therein) to the same extent as if it were a Bank and had acquired its interest by assignment pursuant to paragraph (a) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 10.16 as if it were an assignee under paragraph (a) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 4.01 or 4.02, with respect to any participation, than its Originating Bank would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Requirements of Law that occurs after the Participant acquired the applicable participation. Each Bank that sells a participation agrees, at the Co-Borrowers' request, to use reasonable efforts to cooperate with the Co-Borrowers to effectuate the provisions of Section 10.16 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Bank; provided that such Participant agrees to be subject to Section 2.16 as though it were a Bank. Each Originating Bank shall, acting solely for this purpose as an agent of the Co-Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan

Documents (the “Participant Register”); provided that no Bank shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Bank shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Each Bank agrees to take normal and reasonable precautions and exercise due care to maintain the confidentiality of all information identified as “confidential” or “secret” by the Co-Borrowers and provided to it by the Co-Borrowers under this Agreement or any other Loan Document, and neither it nor any of its Affiliates shall use any such information other than in connection with or in enforcement of this Agreement and the other Loan Documents; except to the extent such information (i) was or becomes generally available to the public other than as a result of disclosure by such Bank or any of its representatives, (ii) was or becomes available on a non-confidential basis from a source other than the Co-Borrowers, *provided* that such source is not bound by a confidentiality agreement with the Co-Borrowers known to such Bank, or (iii) any information internally developed by a Bank or its employees without the use of confidential or secret information furnished by any of the Co-Borrowers; *provided, however*, that each Bank may disclose such information (A) at the request or pursuant to any requirement of any Governmental Authority to which such Bank is subject or in connection with an examination of such Bank by any such authority; (B) pursuant to subpoena or other court process; (C) when required to do so in accordance with the provisions of any applicable Requirement of Law; (D) to the extent reasonably required in connection with any litigation or proceeding to which such Bank or its Affiliates may be party; (E) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (F) to such Bank’s independent auditors and other professional advisors who are under a duty to maintain the confidentiality of such information; (G) to any Affiliate of such Bank and to the Bank’s and such Affiliates’ respective officers, directors, employees, agents, consultants and counsel, for whom such Bank shall be responsible, or to any participant or assignee, actual or potential, any actual or prospective counterparty (or its advisors) to any securitization, swap or derivative transaction relating to the Co-Borrowers, their Subsidiaries and the Obligations; *provided, however*, that such Affiliate, participant or assignee agrees to keep such information confidential to the same extent required of such Bank hereunder, (H) to any credit insurer or reinsurer and (I) as expressly permitted under the terms of any other document or agreement regarding confidentiality to which the Co-Borrowers are party or are deemed party with such Bank.

(f) Notwithstanding any other provision in this Agreement, any Bank may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Bank from any of its obligations hereunder or substitute any such pledgee or assignee for such Bank as a party hereto.

10.09 Set-off. In addition to any rights and remedies of the Banks provided by law, if an Event of Default exists, the Agent, the Issuing Bank and the Banks are authorized at any time and from time to time, without prior notice to the Loan Parties, any such notice being waived by the Loan Parties to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, the Agent, the Issuing Bank and the Banks to or for the credit or the account of the Loan Parties against any and all Obligations, now or hereafter existing, irrespective of whether or not the Agent, the Issuing Bank or the Banks shall have made demand under this Agreement or any Loan Document and although such Obligations may be contingent or unmatured. The Agent, the Issuing Bank and the Banks agree promptly to notify the Co-Borrowers after any such set-off and application made by the Agent, the Issuing Bank or the Banks; *provided, however*, that the failure to give such notice shall not affect the validity of such set-off and application.

10.10 Counterparts. This Agreement may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

10.11 Automatic Debit. With respect to any commitment, fee, arrangement fee, letter of credit fee or other fee, or any other cost or expense (including Attorney Costs) due and payable to the Agent, the Issuing Banks, or the Banks under the Loan Documents, the Co-Borrowers hereby irrevocably authorize the Agent to debit any deposit account of Co-Borrowers with the Agent in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount of the fee or the cost or expense then due, such debits will be reversed (in whole or in part, in Agent's sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section shall be deemed a set-off.

10.12 Bank Blocked Account Charges and Procedures. Agent is hereby authorized to charge any deposit account of the Co-Borrowers or any of them maintained at Agent for any fee, cost or expense (including Attorney Costs) due and payable to the Banks under the Loan Documents. If the available balances in such deposit accounts are not sufficient to compensate the Banks for any such charges or fees due the Banks, the Co-Borrowers agree to pay on demand the amount due the Banks. Each of the Co-Borrowers agrees that it will not permit the Bank Blocked Accounts to become subject to any other pledge, assignment, Lien, charge or encumbrance of any kind, nature or description, other than the Banks' security interest or any Lien the bank where such Bank Blocked Accounts are held may have.

10.13 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.14 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Loan Parties and the Banks and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents.

10.15 Acknowledgments. Parent and the Co-Borrowers hereby acknowledge that:

(a) they have been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) the Agent, the Issuing Bank and the Banks have no fiduciary relationship with or duty to any Loan Party arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Agent, the Issuing Bank and the Banks on the one hand and the Loan Parties on the other hand, in connection herewith or therewith is solely that of debtors and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Agent, the Issuing Bank, the Banks and the Loan Parties.

10.16 Replacement of Banks. If any Bank requests compensation under Section 4.02, or if any Co-Borrower is required to pay any additional amount to any Bank or any Governmental Authority for the account of any Bank pursuant to Section 4.01, or in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.01, the consent of the Majority Banks shall have been obtained but the consent of one or more of such other Banks whose consent is required shall not have been obtained, or with respect to any Bank during such time as such Bank is a Defaulting Bank, then the Co-Borrowers may, at their sole expense and effort, upon notice to such Bank and the Agent, require such Bank to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.08), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Bank, if a Bank accepts such assignment), *provided* that:

(a) Such Bank shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 4.03) from the assignee (to the extent of such outstanding principal and accrued interest and fees);

(b) in the case of any such assignment resulting from a claim for compensation under Section 4.02 or payments required to be made pursuant to Section 4.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(c) such assignment does not conflict with applicable Laws.

A Bank shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Bank or otherwise, the circumstances entitling a Co-Borrower to require such assignment and delegation cease to apply.

10.17 GOVERNING LAW AND JURISDICTION.

(a) THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) OF THE STATE OF NEW YORK; *PROVIDED*, *HOWEVER*, THAT THE BANKS SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK; OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF PARENT, THE CO-BORROWERS AND THE BANKS CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS. PARENT, THE CO-BORROWERS AND THE BANKS EACH IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. PARENT AND THE CO-BORROWERS EACH HEREBY WAIVE PERSONAL SERVICE OF ANY AND ALL PROCESS UPON PARENT OR THE CO-BORROWERS AND IRREVOCABLY APPOINT CORPORATION SERVICE COMPANY, 80 STATE STREET, ALBANY, NY 12207-2543, ALBANY COUNTY, AS REGISTERED AGENT FOR THE PURPOSE OF ACCEPTING SERVICE OF PROCESS WITHIN THE STATE OF NEW YORK AND AGREE TO OBTAIN A LETTER FROM CT CORPORATION ACKNOWLEDGING SAME AND CONTAINING THE AGREEMENT OF CT CORPORATION TO PROVIDE THE BANKS WITH THIRTY (30) DAYS ADVANCE NOTICE PRIOR TO ANY RESIGNATION OF CT CORPORATION SYSTEM AS SUCH REGISTERED AGENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

10.18 WAIVER OF JURY TRIAL. THE PARTIES HERETO EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE PARTIES HERETO EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE

VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF, THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

10.19 ENTIRE AGREEMENT. THIS AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING AMONG THE PARTIES HERETO, AND SUPERCEDES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS AND UNDERSTANDINGS OF SUCH PERSONS, VERBAL OR WRITTEN, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF.

10.20 Intercreditor Agreement. Each Bank hereby agrees that it shall take no action to terminate its obligations under the Intercreditor Agreement and will otherwise be bound by and take no actions contrary to the Intercreditor Agreement.

10.21 USA Patriot Act Notice. Each Bank and the Agent (for itself and not on behalf of any Bank) hereby notifies Parent and each Co-Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Bank or the Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act. Each Loan Party shall, and shall cause each of its Subsidiaries to, provide, to the extent commercially reasonably, such information and take such actions as are reasonably requested by each Bank and the Agent to maintain compliance with the Patriot Act.

10.22 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the Loan Documents in respect of CEA Swap Obligations, if any (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under any Loan Document, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Each Qualified ECP Guarantor intends that this Section constitute, and this Section shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

[remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

CO-BORROWERS:

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: /s/ Nathan Kroeker /s/
Name: Nathan Kroeker
Title: Chief Executive Officer & President

SPARK ENERGY, LLC
a Texas limited liability company

By: /s/ Nathan Kroeker /s/
Name: Nathan Kroeker
Title: Chief Executive Officer & President

SPARK ENERGY GAS, LLC,
a Texas limited liability company

By: /s/ Nathan Kroeker /s/
Name: Nathan Kroeker
Title: Chief Executive Officer & President

PARENT:

SPARK ENERGY, INC.,
a Delaware corporation

By: /s/ Nathan Kroeker /s/
Name: Nathan Kroeker
Title: Chief Executive Officer & President

Signature Page to Credit Agreement
Spark HoldCo, LLC, et al.

AGENT:

SOCIÉTÉ GÉNÉRALE , as Administrative Agent

By: /s/ Michiel V.M. Van Der Voort /s/

Name: Michiel V.M. Van Der Voort

Title: Managing Director

BANKS:

SOCIÉTÉ GÉNÉRALE , as an Issuing Bank and a
Bank

By: /s/ Michiel V.M. Van Der Voort /s/

Name: Michiel V.M. Van Der Voort

Title: Managing Director

Signature Page to Credit Agreement
Spark HoldCo, LLC, et al.

NATIXIS, NEW YORK BRANCH , as a Bank

By: /s/ Arnaud Stevens /s/

Name: Arnaud Stevens

Title: Managing Director & Group Head

By: /s/ Paul Moisselin /s/

Name: Paul Moisselin

Title: Vice President

Signature Page to Credit Agreement
Spark HoldCo, LLC, et al.

**COOPERATIEVE CENTRALE RAIFFEISEN-
BOERENLEENBANK B.A., “RABOBANK
NEDERLAND,” NEW YORK BRANCH**, as a Bank

By: /s/ Rodney P. Hutchinson /s/

Name: Rodney P. Hutchinson

Title: Executive Director

By: /s/ Chan K. Park /s/

Name: Chan K. Park

Title: Managing Director

Signature Page to Credit Agreement
Spark HoldCo, LLC, et al.

RBI INTERNATIONAL FINANCE (USA) LLC , as a
Bank

By: /s/ Astrid Wilke /s/

Name: Astrid Wilke

Title: Group Vice President

By: /s/ Pearl Geffers /s/

Name: Pearl Geffers

Title: First Vice President

Signature Page to Credit Agreement
Spark HoldCo, LLC, et al.

COMPASS BANK , as a Bank

By: /s/ Stephen Shelton /s/

Name: Stephen Shelton

Title: Senior Vice President

Signature Page to Credit Agreement
Spark HoldCo, LLC, et al.

ANNEX A

SECURITY SCHEDULE

1. Security Agreement
2. Guaranty of Parent
3. Pledge Agreement of Parent
4. Pledge Agreement of HoldCo
5. Blocked Account Agreements
 - (a) Three Party Agreement Relating to Bank Accounts among Agent, SEG and Compass Bank
 - (b) Three Party Agreement Relating to Bank Accounts among Agent, Spark and Compass Bank
 - (c) Three Party Agreement Relating to Bank Accounts among Agent, Parent and Compass Bank
 - (d) Three Party Agreement Relating to Bank Accounts among Agent, HoldCo and Compass Bank
 - (e) Assignment of Hedging Account and Control Agreement among SEG, Agent and Newedge USA, LLC
 - (f) Assignment of Hedging Account and Control Agreement among Spark, Agent and Newedge USA, LLC
 - (g) Deposit Account Control Agreement (Access Restricted After Notice) among SEG, Agent and Wells Fargo Bank, National Association covering the Wells Fargo Bank Blocked Account

Annex A

Annex B

CREDIT LIMITS

Counterparty	For customers and markets where Co-Borrowers are able to include mark-to- market component solely with respect to fixed price sales. Variable price sales shall have a credit limit as authorized below.	For customers and markets where Co-Borrowers are unable to include mark-to- market component solely with respect to fixed price sales. Variable price sales shall have a credit limit as authorized in the second column.
Residential*	\$ 5,000	\$ 500
Small and Medium Businesses*	\$ 50,000	\$ 5,000
Commercial and Industrial customers and customers that are governmental entities with no credit rating or a credit rating of less than Baa3/BBB- by Moodys/S&P*	\$ 1,000,000	\$ 500,000
Commercial and Industrial customers and customers that are governmental entities with a credit rating of Baa3/BBB- or higher by Moodys/S&P or supported by credit insurance acceptable in form and substance to Agent **	\$ 5,000,000	\$ 2,500,000
POR Receivables from counterparties with no credit rating or a credit rating of less than Baa3/BBB- by Moodys/S&P *	\$ 5,000,000	\$ 5,000,000
POR Receivables from counterparties with a credit rating of Baa3/BBB- or higher by Moodys/S&P or supported by credit insurance acceptable in form and substance to Agent **	\$ 25,000,000	\$ 25,000,000

* Such Accounts shall be classified as Tier II Accounts.

** Such Accounts shall be classified as Tier I Accounts.

Annex B

Annex C

APPROVED ACCOUNT DEBTORS

<u>COUNTERPARTY</u>	<u>S&P Rating</u>	<u>EXISTING LIMIT</u>	<u>Tier</u>	<u>Qualify for Tier 1 based on Parent Guaranty from:</u>
Anadarko Energy Services, Corp.		\$ 3,000,000	2	
Atmos Energy Marketing, LLC		\$ 6,000,000	2	Atmos Energy Holdings, Inc.
Autonation USA Corp.		\$ 2,000,000	2	
Barclays Bank, PLC	A	\$10,000,000	1	
BG Americas & Global LLC		\$ 2,000,000	2	
BG LNG Services, LLC		\$ 3,000,000	2	
BP Canada Energy Co.	A	\$12,000,000	1	
BP Energy Co.	A	\$15,000,000	1	
BP Products North America	A	\$ 6,000,000	1	
Burger King Corp.	B+	\$ 2,000,000	2	
Burlington Northern Santa Fe, LLC	BBB+	\$ 1,500,000	1	
Calpine Energy Services, LP	B+	\$ 5,000,000	2	Calpine Corporation
Campbell Soup Supply Company, LLC		\$ 6,000,000	2	
Capital District Energy Center Cogeneration Associates		\$ 2,000,000	2	Power Cor Max 2MM for Capital District, Pawtucket and Pittsfield
CenterPoint Energy Services, Inc.		\$ 2,000,000	2	
Chesapeake Energy Marketing, Inc.		\$ 3,000,000	2	

Annex C

COUNTERPARTY	S&P Rating	EXISTING LIMIT	Tier	Qualify for Tier 1 based on Parent Guaranty from:
Chevron Phillips Chemical Company LP	A-	\$ 6,000,000	1	
Chevron Texaco Natural Gas, a division of Chevron (USA) Inc.		\$ 2,000,000	2	
CIMA Energy, Ltd.		\$ 2,000,000	2	
City of San Antonio, TX		\$10,000,000	2	
Colonial Energy, Inc.		\$ 2,000,000	2	
Columbia Gas of Ohio		\$ 4,000,000	2	
Conectiv Energy Supply, Inc.		\$ 1,500,000	2	
ConocoPhillips	A	\$ 6,000,000	1	
Conopco Inc. dba Unilever North America		\$ 5,000,000	2	
Consolidated Edison Solutions		\$ 2,000,000	2	
Constellation Energy Commodities Group (fka Constellation Power Source, Inc.)		\$ 2,000,000	2	
Constellation Proliance LLC		\$ 2,000,000	2	
CP Energy Marketing (U.S.) Inc.	BBB-	\$ 1,000,000	2	Capital Power, L.P.
DCP Midstream Marketing, LP (fka Duke Energy Field Services Marketing, LP)		\$ 1,500,000	2	
Devon Energy Production Company, LP		\$ 3,000,000	2	
Dillard's, Inc.	BB+	\$ 2,000,000	2	
Direct Energy Business Marketing, LLC (fka Hess Corp.)	BBB	\$10,000,000	1	

Annex C

COUNTERPARTY	S&P Rating	EXISTING LIMIT	Tier	Qualify for Tier 1 based on Parent Guaranty from:
Dow Hydrocarbons & Resources, Inc.		\$ 5,000,000	2	
Dufour Petroleum Inc.		\$ 5,000,000	2	
Dynegy Inc.	B	\$ 2,000,000	2	
EDF Trading North America, LLC		\$ 5,000,000	2	
Emera Energy Services,	BBB+	\$ 5,000,000	1	Emera Inc.
Enbridge Marketing (US) LP		\$ 2,000,000	2	
EnCana Marketing (USA) LP		\$ 2,000,000	2	
Energy Authority, Inc. (The)		\$ 3,000,000	2	
Energy USA-TPC Corp.		\$ 2,500,000	2	
Enjet, Inc.		\$ —	2	
Enserco Energy, Inc.		\$ 2,000,000	2	
Enterprise Products Operating LLC	BBB+	\$18,000,000	1	
ERCOT	Aa3	\$ 5,000,000	1	
ETC Marketing Ltd.		\$ 2,500,000	2	
Exempla Healthcare		\$ 2,500,000	2	
FerrellGas, LP	B+	\$ 2,000,000	2	
Fitchburg Gas and Electric Light Company		\$ 3,000,000	2	
Forest Oil Corp.	B-	\$ 1,100,000	2	
Formosa Plastics Corp. USA	BBB+	\$ 2,000,000	1	
Gavilon, LLC	NR	\$ 4,000,000	2	Gavilon Group, LLC

Annex C

COUNTERPARTY	S&P Rating	EXISTING LIMIT	Tier	Qualify for Tier 1 based on Parent Guaranty from:
Gazprom Marketing & Trading USA, Inc.		\$ 5,000,000	2	Gazprom Marketing & Trading, Ltd.
General Services Administration	US Gov	\$10,000,000	1	
Goodrich Petroleum Corp.	B-	\$ 2,000,000	2	
Hannaford Bros. Co.		\$ 2,500,000	2	
Hartford Hospital		\$ 3,000,000	2	
Heritage Energy Resources, LLC		\$ 3,000,000	2	
Home Depot USA, Inc.		\$ 1,500,000	2	
Hopewell Cogeneration LP		\$ 2,000,000	2	
Houston Pipeline Co.		\$ 3,000,000	2	
Inergy Propane, LLC		\$ 3,500,000	2	
Integrus Energy Services, Inc. (fka WPS Energy Services, Inc.)		\$ 4,000,000	2	
Interstate Gas Supply, Inc.		\$ 3,000,000	2	
J.Aron & Co.		\$ 3,000,000	2	
Jefferson and Cocke Counties, TN		\$ 3,000,000	2	
Jefferson County School District		\$ 1,500,000	2	
JP Morgan Ventures Energy Corporation	A	\$ 5,000,000	1	JP Morgan Chase & Company
Kinder Morgan Tejas Pipeline,LLC		\$ 4,000,000	2	Kinder Morgan Energy Partners, LP
Kinder Morgan Texas Pipeline, LLC		\$ 4,000,000	2	Kinder Morgan Energy Partners, LP

Annex C

COUNTERPARTY	S&P Rating	EXISTING LIMIT	Tier	Qualify for Tier 1 based on Parent Guaranty from:
Kinetic Resources (USA)		\$ 1,500,000	2	
Macquarie Energy, LLC (fka Macquarie Cook Energy, LLC and Cook Inlet Energy Services)		\$ 3,000,000	2	
Marathon Petroleum Corp	BBB	\$10,000,000	1	
Merrill Lynch Commodities, Inc.	BBB	\$ 3,000,000	2	Merrill Lynch & Co., Inc.
MHC Operating Limited Partnership		\$ 1,500,000	2	
Mieco, Inc.		\$ 1,500,000	2	
MillerCoors LLC		\$ 2,000,000	2	
Mohegan Tribal Gaming Authority	B-	\$ 2,000,000	2	
Morgan Stanley Capital Group, Inc.		\$ 3,000,000	2	
Murphy Gas Gathering		\$ 3,000,000	2	
New York City Housing Authority		\$12,000,000	1	
New York State Power Authority		\$ 7,000,000	1	
Nexen Inc.	BBB-	\$ 6,000,000	1	
Nexen Marketing (USA) Inc.		\$ 2,000,000	2	
NextEra Energy Power Marketing, Inc. (fka FPL Energy Power Marketing, Inc.)	A-	\$ 1,500,000	1	NextEra Energy Capital Holdings Inc.
Niska Gas Storage	B+	\$ 2,000,000	2	
Occidental Energy Marketing, Inc.		\$ 6,000,000	2	
ONEOK Energy Services Company, LP		\$ 3,000,000	2	
ONEOK Hydrocarbon, LP		\$ 3,000,000	2	

Annex C

COUNTERPARTY	S&P Rating	EXISTING LIMIT	Tier	Qualify for Tier 1 based on Parent Guaranty from:
Pacific Gas & Electric Company	BBB	\$10,000,000	1	
Pacific Summit Energy, LLC		\$ 5,000,000	1	Sumitomo Corporation
Pawtucket Power Associates Limited Partnership		\$ 2,000,000	2	Power Corp Max 2MM for Capital District, Pawtucket and Pittsfield
Philadelphia Gas Works		\$ 3,000,000	2	
Pittsfield Generating Company LP		\$ 2,000,000	2	Power Corp Max 2MM for Capital District, Pawtucket and Pittsfield
Placid Refining Co, LLC		\$ 2,000,000	2	
Plains Marketing, LP		\$ 5,000,000	2	
Pontchartrain Natural Gas System	NR	\$ 2,000,000	2	Enterprise Products Operating, LLC
Praxair Surface Technologies, Inc.	NR	\$ 7,500,000	1	
PSEG Power New York, Inc.		\$ 2,000,000	2	
Range Resources Corp.	BB	\$ 3,000,000	2	
Repsol Energy North America Corporation		\$ 5,000,000	2	Repsol YPF S.A for \$2.5 million
Saint Gobain Corp.		\$ 5,000,000	2	
Sempra Energy	BBB+	\$ 6,000,000	1	
Sempra Energy Trading Corp.		\$ 6,000,000	2	
Sequent Energy Management, L.P. and Sequent Energy Canada Corp.	BBB+	\$ 5,000,000	1	AGL Resources, Inc.

Annex C

COUNTERPARTY	S&P Rating	EXISTING LIMIT	Tier	Qualify for Tier 1 based on Parent Guaranty from:
Shell Energy North America (Canada) Inc.		\$ 7,000,000	1	
Shell Energy North America (US) LP	AA-	\$ 7,000,000	1	
Shell Energy Trading (US) Company		\$ 6,000,000	1	
Sikorsky Aircraft Corp.		\$ 3,000,000	2	
SM Energy Company (fka St. Mary Land & Exploration Co.)	BB	\$ 2,000,000	2	
Southern Connecticut Gas	BBB	\$ 3,000,000	1	
SouthWest Gas Corp.	A-	\$ 6,500,000	1	
Southwestern Energy Company	BBB-	\$ 2,000,000	1	
Sprague Energy Corp.		\$ 3,700,000	2	
Starwood Hotels & Resorts Worldwide, Inc.	BBB	\$ 3,000,000	1	
Statoil Natural Gas LLC		\$ 2,000,000	2	
Tauber Oil Company		\$ 2,000,000	2	
TC Ravenswood, LLC	A-	\$10,000,000	1	TransCanada Corporation
Tenaska Marketing Ventures		\$ 2,000,000	2	
Texon, LP		\$ 5,000,000	2	
Toray Plastics (America), Inc.		\$ 3,000,000	2	
Total Gas & Power North America, Inc.		\$ 6,000,000	2	
Twin Eagle Resource Management, LLC		\$ 1,500,000	2	
U.S. Energy Corp.		\$ 4,000,000	2	

Annex C

COUNTERPARTY	S&P Rating	EXISTING LIMIT	Tier	Qualify for Tier 1 based on Parent Guaranty from:
United Energy Trading, LLC		\$ 2,000,000	2	
UGI Energy Services Inc.		\$ 4,000,000	2	
Vitol Inc.		\$10,000,000	2	
Westlake Petrochemicals, LP		\$ 5,000,000	2	
Westlake Vinyls, LP		\$ 5,000,000	2	
Wild Goose Storage, LLC		\$ 2,000,000	2	
Williams Power Company, Inc.		\$ 3,000,000	2	

Annex C

SCHEDULE 1.01(a)**EXISTING LETTERS OF CREDIT*****Spark Energy Gas, LLC***

<u>Counterparty</u>	<u>Amount</u>	<u>Issue Date</u>	<u>Exp Date</u>	<u>Auto-Renewal</u>	<u>Type</u>	<u>SG LC #</u>
Bay State Gas Company	\$ 90,000.00	27-Dec-12	25-Oct-14	Auto-Renew	Performance	N.SOL.15432
Citizens Gas & Coke Utility	\$ 100,000.00	30-Jan-13	29-Jan-15	Auto-Renewal	Performance	N.SOL.15588
Columbia Gas of Ohio, Inc.	\$ 38,000.00	27-Dec-12	30-Oct-14	Auto-Renewal	Performance	N.SOL.15428
Kern River Gas Transmission Company	\$2,000,000.00	4-Jan-13	3-Jan-15	Evergreen	Performance	N.SOL.15473
Northern Illinois Gas Company D/B/A NICOR Gas Company	\$ 370,000.00	7-Jan-13	31-Oct-14	None	Performance	N.SOL.15514
Northern Indiana Public Service Company	\$ 104,375.00	31-Dec-12	18-Sep-14	Auto-Renewal	Performance	N.SOL.15451
Pacific Gas and Electric Company	\$ 520,000.00	15-Jan-13	4-Oct-14	Auto-Renew	Performance	N.SOL.15526
Public Service Electric & Gas Co.	\$ 140,000.00	3-Jan-13	31-Oct-14	None	Performance	N.SOL.15426
San Diego Gas & Electric Company	\$ 45,000.00	28-Jan-13	28-Jan-15	Auto-Renew	Performance	N.SOL.15574
Southern California Gas Company	\$ 500,000.00	28-Jan-13	28-Jan-15	Auto-Renewal	Performance	N.SOL.15575
Vector Pipeline L.P.	\$ 90,000.00	10-Jan-13	20-Apr-15	Auto-Renewal	Performance	N.SOL.15483
Vector Pipeline Limited Partnership	\$ 20,000.00	10-Jan-13	20-Apr-15	Auto-Renewal	Performance	N.SOL.15484

Spark Energy, LLC

<u>Counterparty</u>	<u>Amount</u>	<u>Issue Date</u>	<u>Exp Date</u>	<u>Auto-Renewal</u>	<u>Type</u>	<u>SG LC #</u>
New England Independent System Operator, Inc.	\$ 800,000.00	26-Dec-12	23-Feb-15	None	Performance	N.SOL.15416
New York Independent System Operator, Inc.	\$1,400,000.00	24-Dec-12	26-Dec-14	Auto-Renewal	Performance	N.SOL.15409
PJM Settlement, INC.	\$2,945,000.00	21-Dec-12	7-Jul-15	Evergreen	Performance	N.SOL.15406
Public Service Electric & Gas Co.	\$ 60,000.00	3-Jan-13	31-Oct-14	None	Performance	N.SOL.15427
Public Utility Commission of Texas	\$ 500,000.00	29-Jan-13	10-Jan-15	Auto-Renewal	Performance	N.SOL.15506

Schedule 1.01(a)

SCHEDULE 1.01(b)

POR AGREEMENTS

1. Electric Billing Services Agreement dated October 15, 2010, by and between Baltimore Gas and Electric Company and Spark Energy, LLC.
2. Billing Services Agreement dated October 18, 2010, by and between Baltimore Gas and Electric Company and Spark Energy Gas, LLC.
3. Billing Services, Purchase of Accounts Receivables, and Assignment Agreement dated as of July 31, 2009 between The Brooklyn Union Gas Company d/b/a National Grid, and Spark Energy Gas, LLC.
4. Billing Services, Purchase of Accounts Receivables, and Assignment Agreement dated as of July 31, 2009 between KeySpan Gas East Corporation d/b/a National Grid, and Spark Energy Gas, LLC.
5. Agreement for Billing Services and for the Purchase of Electric Accounts Receivable dated July 24, 2007, by and between Niagara Mohawk Power Corporation and Spark Energy, LLC, as amended by Amendment No. 1 To The Agreement for Billing Services and for the Purchase of Electric Accounts Receivable (ESCO Referral Program) effective as of July 24, 2007, by and between Niagara Mohawk Power Corporation and Spark Energy, LLC.
6. Agreement for Billing Services and for the Purchase of Gas Accounts Receivable dated July 11, 2007, by and between Niagara Mohawk Power Corporation and Spark Energy Gas, LLC.
7. Supplier Aggregation Service Agreement dated May 1, 2010, by and between Northern Indiana Public Service Company and Spark Energy Gas, LLC.
8. Consolidated Utility Billing Service and Assignment Agreement dated January 25, 2006, by and between Consolidated Edison Company of New York, Inc. and Spark Energy, LLC.
9. Consolidated Utility Billing Service and Assignment Agreement dated _____, by and between Consolidated Edison Company of New York, Inc. and Spark Energy Gas, LLC.
10. Accounts Receivable Purchase Agreement dated October 14, 2011, by and between Columbia Gas of Ohio, Inc. and Spark Energy Gas, LLC.
11. Commonwealth Edison Rider PORCB Election dated January 25, 2011, by Spark Energy, LLC.

Schedule 1.01(b)

-
12. Public Service Electric and Gas Company Third Party Supplier Customer Account Master Service Agreement, by Spark Energy, LLC.
 13. Public Service Electric and Gas Company Third Party Supplier Customer Account Master Service Agreement, by Spark Energy Gas, LLC.
 14. Coordination Agreement dated June 11, 2010, by and between PECO Energy and Spark Energy, LLC, referencing PECO EGS Coordination Tariff, wherein POR is described in Competitive Billing Specifications Rider.
 15. Coordination Agreement dated December 14, 2009, by and between PP&L, Inc. and Spark Energy, LLC, referencing PPL EGS Coordination Tariff, wherein POR is described in Section 12, Payment and Billing.
 16. Electric Supplier Service Agreement dated July 20, 2010, by and between The United Illuminating Company and Spark Energy, LLC, wherein Section 7 references billing and payment processing and the DPUC-approved Bills Rendered Payment Mechanism.
 17. Electric Supplier Service Agreement dated _____, by and between Connecticut Light & Power Company and Spark Energy, LLC, wherein Section 7 references billing and payment processing and the DPUC-approved Bills Rendered Payment Mechanism.
 18. Service Agreement dated November 25, 2008, by and between The East Ohio Gas Company and Spark Energy Gas, LLC, wherein purchase of receivables is referenced in Billing Agreement - Option 2.

Schedule 1.01(b)

SCHEDULE 2.01

COMMITMENTS

Société Générale	\$22,000,000.00	31.428571429%
Natixis, New York Branch	\$13,000,000.00	18.571428571%
Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland," New York Branch	\$13,000,000.00	18.571428571%
RBI International Finance (USA) LLC	\$13,000,000.00	18.571428571%
Compass Bank	\$ 9,000,000.00	12.857142857%
	<u>\$70,000,000.00</u>	<u>100%</u>

Schedule 2.01

SCHEDULE 6.11

LIABILITIES

1. Citywestplace Office Lease by and between TPG-2101 CITYWEST 3 & 4 L.P. and Spark Energy Ventures, LLC.
2. Master Service Agreement by and between ISTA North America, Inc. and Spark Energy, LLC

Schedule 6.11

SCHEDULE 6.15

SUBSIDIARIES AND EQUITY INVESTMENTS

1. Spark Energy, Inc.:
 - (a) Spark HoldCo, LLC (3,000,000 Membership Units; Sole Managing Member)
2. Spark HoldCo, LLC:
 - (a) Spark Energy Gas, LLC (100% Membership Interest)
 - (b) Spark Energy, LLC (100% Membership Interest)
3. Spark Energy Gas, LLC: NONE
4. Spark Energy, LLC: NONE

Schedule 6.15

SCHEDULE 6.21

DEPOSIT ACCOUNTS, SECURITIES ACCOUNTS AND HEDGING ACCOUNTS

A. Deposit Accounts and Securities Accounts

Spark Energy Gas, LLC

Compass Bank Account Nos.:

87113329
29200734
29200815 (Lockbox)

Wells Fargo Account Nos.:

4174907669 (Lockbox)
4945021152

Spark Energy, LLC

Compass Bank Account Nos.:

87113124
12217196
23158868
29200793 (Lockbox)

Spark HoldCo, LLC

Compass Bank Account No.:

6723506466

Spark Energy, Inc.

Compass Bank Account No.:

6723499931

B. Hedging Accounts

Spark Energy Gas, LLC

Newedge Account Nos.:

F TX600 GGG15310
F TX600 03915310

Spark Energy, LLC

Newedge Account Nos.:

F RV028 11115311

SCHEDULE 7.10

PERMITTED INDEBTEDNESS AND LIENS

None.

Schedule 7.10

SCHEDULE 7.18

LOCATIONS OF INVENTORY

Spark Energy Gas, LLC:

ANR

Osceola, Clare & Montcalm County

Baltimore Gas & Electric (BG&E)

Baltimore County

Carthage

Panola, TX

Columbia Ohio

Richland, Franklin, Montgomery,
Hocking, Vinton & Guernse County

Dominion East Ohio

Wayne, Stark & Summit county

Dominion Transmission, Inc.

Natural Gas Pipeline Co. (NGPL)

Douglas (IL), Shelby (IL), Kankake (IL), Iowa (IA) & Louisa (IA)
County

Nicor

Troy Grove Storage Field

169 N 36th Road

Mendota, IL 61342

Nipsco

Cass County

Panhandle Eastern Pipeline (PEPL)

Livingston County

PG&E

San Joaquin & Costa County, CA

Storage for Dominion operates as an aggregate with the following breakdown allocation:

PA (63.405%)
NY (9.7463%)
W. VA (26.8487%)

Egan

Acadia County (LA)

KMTP

Jackson, TX

Moss Bluff

Liberty County (TX)

NIMO - National Grid

Suffolk, MA

National Fuel

Onondaga & Kings (NY)

San Diego Gas & Electric (SDG&E)

San Diego County, CA

SOCAL

Los Angeles County, CA

Tennessee Gas Pipeline

Ellisburg-Northern Storage

Potter's County, PA

Tetco

Juniata, PA

Washington 10

Macomb County

Schedule 7.18

SCHEDULE 10.02

ADDRESSES FOR NOTICES

PARENT & CO-BORROWERS:

2105 CityWest Blvd,
Suite 100
Houston, TX 77042
Attention: Nathan Kroeker
Telephone: (281) 833-4153
Facsimile: (281) 833-4859
Email: nkroeker@sparkenergy.com

With a copy to:

2105 CityWest Blvd,
Suite 100
Houston, TX 77042
Attention: Terry D. Jones, Executive Vice President & General Counsel
Telephone: (832) 217-1848
Facsimile: (281) 833-4815
Email: tjones@sparkenergy.com

AGENT:

Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Telephone: 972 387 5002
Facsimilie: 972 387 5014
Email: corey.hingson@sgcib.com

With a copy to:

Société Générale, as Administrative Agent
245 Park Ave
New York, New York, 10167
Attention: Huub Kops
Telephone: (212) 278-7592
Facsimile: (212) 278-7987
Email: huub.kops@sgcib.com

EXHIBIT A-1

**NOTICE OF BORROWING
(Working Capital Loan)**

[Date]

Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Facsimilie: 972 387 5014
Email: corey.hingson@sgcib.com

Re: Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “ Agreement ”), by and among Spark Energy, Inc. (“ Parent ”), Spark HoldCo, LLC (“ HoldCo ”), Spark Energy, LLC (“ Spark ”), Spark Energy Gas, LLC (“ SEG ”), Société Générale, and the other financial institutions which may become a party thereto (collectively, the “ Banks ”).

Ladies and Gentlemen:

Reference is made to the Agreement (capitalized terms used herein that are not defined shall have the respective meanings ascribed thereto in the Agreement). HoldCo hereby gives notice of its intention to borrow under the Working Capital Line.

[Please advance \$ _____ as a Working Capital Loan (and [Base Rate Loan][COF Rate Loan]), effective on _____, 20 _____. (This Notice of Borrowing is delivered prior to 1:00 p.m. New York City time, on the Borrowing Date.)] [Please advance \$ _____ (\$5,000,000 or an increment of \$1,000,000 in excess thereof) as a Working Capital Loan (and Eurodollar Rate Loan), effective on _____, 20 _____ with an Interest Period of _____. (This Notice of Borrowing is delivered prior to 1:00 p.m. New York City time, three (3) Business Days prior to the Borrowing Date.)]

The requested advance relates to the following Advance Sub-limit Cap:

- (a) For the purchase of Product and other uses permitted under Section 7.07 of the Credit Agreement: _____
- (b) For Contango Transactions: _____

Exhibit A-1

The requested advance will be used on behalf of the following Co-Borrower(s): _____ .

HoldCo represents and warrants, as of the date hereof and as of the date any Working Capital Loan is made or renewed, that (i) no Default or Event of Default has occurred and is continuing; (ii) that after giving effect to the Working Capital Loan requested above, the appropriate Advance Sub-limit Cap and the Borrowing Base Advance Cap will not be exceeded and (iii) the Loan Parties' representations and warranties under the Agreement are true and correct in all material respects.

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Exhibit A-1

NOTICE OF BORROWING
(Letters of Credit)

[Date]

Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Facsimilie: 972 387 5014
Email: corey.hingson@sgcib.com

Re: Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “ Agreement ”), by and among Spark Energy, Inc. (“ Parent ”), Spark HoldCo, LLC (“ HoldCo ”), Spark Energy, LLC (“ Spark ”), Spark Energy Gas, LLC (“ SEG ”), Société Générale, and the other financial institutions which may become a party thereto (collectively, the “ Banks ”).

Ladies and Gentlemen:

Reference is made to the Agreement (capitalized terms used herein that are not defined shall have the respective meanings ascribed thereto in the Agreement). HoldCo hereby gives notice of its intention to request the [**issuance, amendment, or renewal**] of Letters of Credit under the Working Capital Line as is further described on the Letter of Credit Application(s) attached hereto.

The requested [issuance/amendment/renewal] relates to the following L/C Sub-limit Cap:

- (a) Documentary and Standby Letters of Credit issued for the purpose of financing the purchase of Product and Performance Standby Letters of Credit, in each case with terms of up to 90 days: _____
- (b) Standby Letters of Credit issued for the purpose of financing a Contango Transaction with terms of up to 365 days: _____
- (c) Documentary and Standby Letters of Credit issued for the purpose of financing the purchase of Product and Performance Standby Letters of Credit, in each case with terms of greater than 90 days and up to 365 days: _____

HoldCo represents and warrants, as of the date hereof and as of the date any Letter of Credit is Issued, amended or renewed, that (i) no Default or Event of Default has occurred and is continuing; (ii) that after giving effect to the Letters of Credit requested above, none of the following limits, as applicable, will be exceeded: (a) the Borrowing Base Advance Cap; (b) any L/C Sub-limit Cap; or (c) the Advance Sub-Limit Cap; and (iii) the Loan Parties' representations and warranties under the Agreement are true and correct in all material respects.

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Exhibit A-1

EXHIBIT A-2

FORM OF
NOTICE OF CONVERSION/CONTINUATION

[Date]

Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Facsimilie: 972 387 5014
Email: corey.hingson@sgcib.com

Re: Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “Agreement”), by and among Spark Energy, Inc. (“Parent”), Spark HoldCo, LLC (“HoldCo”), Spark Energy, LLC (“Spark”), Spark Energy Gas, LLC (“SEG”), Société Générale, and the other financial institutions which may become a party thereto (collectively, the “Banks”).

Ladies and Gentlemen:

HoldCo hereby gives you irrevocable notice pursuant to Section 2.05 of the Agreement that they hereby request a [conversion] [continuation] of [outstanding Borrowings] [an outstanding Borrowing] into a new Borrowing (the “Proposed Borrowing”) on the terms set forth below:

Outstanding Borrowing #1

Date of Borrowing:
Aggregate Amount for Conversion ¹ :
Type of Advance:
Interest Period:

¹ The aggregate amount for conversion or continuation with respect to Borrowings comprised of Eurodollar Rate Loans must be made in an amount equal to \$5,000,000 and multiples of \$1,000,000 in excess thereof.

Proposed Borrowing

Date of Conversion or Continuation ²:

Aggregate Amount:

Type of Advance:

Interest Period:

HoldCo hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Borrowing:

(a) the representations and warranties contained in the Agreement are correct in all material respects, before and after giving effect to the proposed Borrowing and the application of the proceeds therefrom;

(b) no Default has occurred and is continuing, nor would result from the proposed Borrowing; and

(c) the Borrowing Base Advance Cap will not be exceeded after giving effect to the proposed Borrowing.

Very truly yours,

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: Responsible Officer

² The date of the proposed conversion must be a Business Date. Borrower must give three(s) Business Days' advance notice for conversions into or continuations of Borrowings comprised of Eurodollar Rate Loans, and the same Business Day advance notice for conversions into or continuations of Borrowings comprised of Base Rate Loans or COF Rate Loans.

EXHIBIT B

FORM OF NOTE

\$

, 20

FOR VALUE RECEIVED, **SPARK HOLDCO, LLC** (“HoldCo”), a Delaware limited liability company, **SPARK ENERGY, LLC** (“Spark”), a Texas limited liability company, and **SPARK ENERGY GAS, LLC** (“SEG”), a Texas limited liability company (jointly, severally and together, the “Co-Borrowers,” and each individually, a “Co-Borrower”), jointly and severally promise to pay to _____, a (“Bank”), at the office of Agent (as defined in the Credit Agreement defined below) or at such other place as Bank from time to time may designate, the principal sum of _____ and no/100 Dollars (\$) (the “Maximum Loan Amount”), or so much of that sum as may be advanced under this promissory note (“Note”), plus interest as specified in this Note. This Note evidences a loan (“Loan”) from Bank to the Co-Borrowers.

This Note is issued pursuant to that certain Credit Agreement, dated effective as of August 1, 2014, among Spark Energy, Inc., the Co-Borrowers and Bank, *et al.* (as it may be amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”). Each capitalized term used but not otherwise defined in this Note shall have the meaning ascribed to such term in the Credit Agreement. Some or all of the Loan Documents, including the Credit Agreement, contain provisions for the acceleration of the maturity of this Note.

This Note shall bear interest as is provided for in the Credit Agreement.

Principal and accrued interest hereunder shall be due and payable as is provided for in the Credit Agreement.

The Co-Borrowers may prepay the principal under this Note only in accordance with the Credit Agreement.

If any Event of Default occurs, Bank shall have all remedies provided for under the terms of the Credit Agreement.

All amounts payable under this Note are payable in lawful money of the United States during normal business hours of Agent at the office of Agent indicated in paragraph one above or at such other place as Agent from time to time may designate. Checks constitute payment only when collected.

Whenever the Co-Borrowers are obligated to pay or reimburse Bank for any attorneys’ fees, those fees shall include the reasonably allocated costs for services of in-house counsel.

Exhibit B

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) OF THE STATE OF NEW YORK; PROVIDED , HOWEVER , THAT THE BANKS SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

The Co-Borrowers agree that the holder of this Note may accept additional or substitute security for this Note, or release any security or any party liable for this Note, and without affecting the liability of any Co-Borrower.

If Bank delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any of Bank's rights, or of any breach, default or failure of condition of or under this Note. No waiver by Bank of any of its rights, or of any such breach, default or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Bank. All of Bank's remedies in connection with this Note or under applicable law shall be cumulative, and Bank's exercise of any one or more of those remedies shall not constitute an election of remedies.

Regardless of any provision contained in this Note or in any of the other Loan Documents, Bank shall never be deemed to have contracted for or be entitled to receive, collect or apply as interest on the Loan, pursuant to this Note or any other Loan Document, or otherwise, any amount in excess of the maximum rate of interest permitted to be charged by applicable law, and, in the event that Bank ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance of the Loan, and, if the principal balance of the Loan is paid in full, any remaining excess shall forthwith be paid to the Co-Borrowers. In determining whether or not the interest paid or payable under any specific contingency exceeds the highest lawful rate, the Co-Borrowers and Bank shall, to the maximum extent permitted under applicable law, (a) characterize any non-principal payment as an expense, fee, or premium, rather than as interest, (b) exclude voluntary prepayments and the effect thereof, and (c) spread the total amount of interest throughout the entire contemplated term of the Loan so that the interest rate is uniform throughout such term; *provided* , that if the Loan is paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual term thereof exceeds the maximum lawful rate, Bank shall refund to the Co-Borrowers the amount of such excess, or credit the amount of such excess against the aggregate unpaid principal balance of the Loan at the time in question.

This Note inures to and binds the successors and assigns of the Co-Borrowers and Bank; *provided , however* , that the Co-Borrowers may not assign this Note or assign or delegate any of their rights or obligations except as permitted under the Credit Agreement.

As used in this Note, the terms "Bank," "holder" and "holder of this Note" are interchangeable. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

Exhibit B

THIS WRITTEN AGREEMENT AND THE CREDIT AGREEMENT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Exhibit B

IN WITNESS WHEREOF , the undersigned have caused this Note to be executed and delivered as of the date above first written.

CO-BORROWERS:

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SPARK ENERGY, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

SPARK ENERGY GAS, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

Exhibit B

EXHIBIT C

FORM OF NET POSITION REPORT

[Date]

Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Facsimilie: 972 387 5014
Email: corey.hingson@sgcib.com

Re: Net Positions

In my capacity as Responsible Officer, authorized to act on behalf of each of Spark Energy, LLC (“Spark”) and Spark Energy Gas, LLC (“SEG”), I hereby certify to you that as of the date written above,

	Electricity Megawatt
	<u>Hours</u>
Long Position	_____
Short Position	(_____)
Net Position	_____
	Natural gas
	<u>MMBtus</u>
Long Position	_____
Short Position	(_____)
Net Position	_____

To the best of my knowledge, (a) the aggregate Net Position for the Co-Borrowers has at no time exceeded the applicable limitation set forth in Section 7.17 of that certain Credit Agreement, dated as of August 1, 2014 by and among Spark, SEG and related entities, Société Générale, and the other financial institutions which may become parties thereto (the “Credit Agreement”) and (b) the Net Position for each Product has at no time exceeded the applicable limitations set forth in the Risk Management Policy. Terms not defined herein have the meanings assigned to them in the Credit Agreement.

Exhibit C

Very truly yours,

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: Responsible Officer

Exhibit C

EXHIBIT D

**FORM OF
COLLATERAL POSITION REPORT**

Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Facsimilie: 972 387 5014
Email: corey.hingson@sgcib.com

Re: Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “Agreement”), by and among Spark Energy, Inc. (“Parent”), Spark HoldCo, LLC (“HoldCo”), Spark Energy, LLC (“Spark”), Spark Energy Gas, LLC (“SEG”), Société Générale, and the other financial institutions which may become a party thereto (collectively, the “Banks”).

Ladies and Gentlemen:

The undersigned Responsible Officer (as that term is defined in the Agreement), who is authorized to act on behalf of HoldCo, Spark, and SEG, delivers the attached report to the Banks and certifies to the Banks that it is in compliance with the Agreement. Further, the undersigned hereby certifies that the undersigned has no knowledge of any Defaults or Events of Default under the Agreement which exist as of the date of this letter.

The undersigned also certifies that the amounts set forth on the attached report constitute all Collateral which has been or is being used in determining availability for a Letter of Credit or advance under the Working Capital Line as of the preceding date. This certificate and attached report are submitted pursuant to Subsection 7.02(b) of the Agreement.

Very truly yours,

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: Responsible Officer

Exhibit D

COLLATERAL POSITION REPORT

COLLATERAL POSITION REPORT AS OF:

To: Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Facsimilie: 972 387 5014
Email: corey.hingson@sgcib.com

I hereby certify that as of the date written above, the amounts indicated below were, to the best of my knowledge, true and accurate as of the date of preparation, and have not and are not being used in determining availability for any other advance or Letter of Credit Issuance.

I. COLLATERAL

	HoldCo	Spark	SEG	Gross Collateral	Advance Rate	Net Collateral
A. Cash Collateral & other liquid investments (not being used in determining availability for any other advance or Letter of Credit Issuance)	0	0	0	0	100%	0
B. Equity in Approved Brokerage Accounts	0	0	0	0	90%	0
C. Tier I Accounts net of deductions, offsets and counterclaims	0	0	0	0	90%	0
D. Tier II Accounts net of deductions, offsets and counterclaims	0	0	0	0	85%	0
E. Tier I Unbilled Qualified Accounts net of deductions, offsets and counterclaims	0	0	0	0	85%	0
F. Tier II Unbilled Qualified Accounts net of deductions, offsets and counterclaims	0	0	0	0	80%	0
G. Hedged/Pre-sold Inventory	0	0	0	0	85%	0
H. Eligible Inventory	0	0	0	0	80%	0
I. Net Eligible Exchange Receivables	0	0	0	0	80%	0
J. Letters of Credit for Products Not Yet Delivered	0	0	0	0	80%	0
K. In-The-Money positions with tenors up to 12 months	0	0	0	0	60%	0

Exhibit D

Less any of the following:

L. The amounts (including disputed items) which would be subject to a so-called "First Purchaser Lien" as explained in Clause (c)(xiii) of Borrowing Base Advance Cap	0	0	0	0	100%	0
M. 115% of the amount of any mark to market exposure to the Swap Banks under Swap Contracts as reported by the Swap Banks, reduced by Cash Collateral held by a Swap Bank	0	0	0	0	115%	0
N. 115% of the amount of any mark to market exposure to the Swap Banks under Physical Trade Contracts as reported by the Swap Banks, until nomination for delivery is made and then 115% of the notional amount of exposure to the Swap Banks, in each case, reduced by Cash Collateral held by a Swap Bank	0	0	0	0	115%	0
O. Reserves	0	0	0	0	100%	0
P. Sales Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>100%</u>	<u>0</u>
Q. TOTAL COLLATERAL	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u> </u>	<u>0</u>

II. BANK OUTSTANDING (Net of Letters of Credit):

TOTAL REDUCTIONS IN COLLATERAL \$0

Loans	LC's
SEG Contango = 0	SEG Contango = 0
Spark = 0	Spark = 0
SEG = 0	SEG = 0
HoldCo = <u>0</u>	HoldCo = <u>0</u>

IV. EXCESS/(DEFICIT) COLLATERAL:

Actual = \$0

V. Enclosed are all the necessary reports with details for the above including the following:

1. Schedule of qualified customers that shows the aging of such accounts.
2. Schedule of netted qualified exchange balances.
3. Schedule of qualified inventory.
4. Brokerage statements.

Exhibit D

-
5. Detailed information related to forward in-the-money positions by counterparty.
 6. Reporting by Swap Banks.
 7. Bank statements.
 8. Schedule of all contras applied against any of the above.
 9. Mark-to-market profit and loss statement (if applicable).

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: Responsible Officer

Exhibit D

EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

[Date]

Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Facsimile: 972 387 5014
Email: corey.hingson@sgcib.com

Re: Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “Agreement”), by and among Spark Energy, Inc. (“Parent”), Spark HoldCo, LLC (“HoldCo”), Spark Energy, LLC (“Spark”), Spark Energy Gas, LLC (“SEG”), Société Générale, and the other financial institutions which may become a party thereto (collectively, the “Banks”).

Ladies and Gentlemen:

The undersigned Responsible Officer (as that term is defined in the Agreement) certifies to the Banks that Parent, HoldCo, Spark, and SEG and are in compliance with the Agreement and in particular certifies the following as of _____ :

	Actual Level	Required Level
(i) Net Working Capital	\$ _____ ;	\$ _____ ;
(ii) Tangible Net Worth	\$ _____ ;	\$ _____ ;
(iv) Leverage Ratio	to _____ ;	to _____ ;

Further, the undersigned hereby certify that they have no knowledge of any Defaults under the Agreement which exists as of the date of this letter.

Exhibit E

Very truly yours,

SPARK ENERGY, INC.

a Delaware corporation

By: _____

Name: _____

Title: Responsible Officer

Exhibit E

EXHIBIT F

**CERTIFICATE OF RESPONSIBLE OFFICER OF
PARENT**

[Date]

Société Générale, as Administrative Agent
Two Lincoln Centre
5420 LBJ Freeway, Suite 1940
Dallas, TX 75240
Attention: Corey Hingson
Facsimilie: 972 387 5014
Email: corey.hingson@sgcib.com

Re: Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “Agreement”), by and among Spark Energy, Inc. (“Parent”), Spark HoldCo, LLC (“HoldCo”), Spark Energy, LLC (“Spark”), Spark Energy Gas, LLC (“SEG”), Société Générale, and the other financial institutions which may become a party thereto (collectively, the “Banks”).

Ladies and Gentlemen:

The undersigned, in his capacity as Responsible Officer (as such term is defined in the Agreement) of each of Parent, HoldCo, Spark and SEG certifies the following to the Banks on behalf of itself in accordance with Section 5.01 of the Agreement:

1. The representations and warranties contained in Article VI of the Agreement are true and correct on and as of the Closing Date, as though made on and as of the Closing Date;
2. No Default or Event of Default exists or would result from the initial Credit Extension on the Closing Date; and
3. There has occurred since December 31, 2013, no event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect.
4. The conditions precedent in Section 5.01 of the Agreement have been met.

CO-BORROWERS:

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: Responsible Officer

Exhibit F

SPARK ENERGY, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: Responsible Officer

SPARK ENERGY GAS, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: Responsible Officer

PARENT:

SPARK ENERGY, INC.
a Delaware corporation

By: _____
Name: _____
Title: Responsible Officer

Exhibit F

EXHIBIT G

FORM OF COMMITMENT INCREASE AGREEMENT

THIS COMMITMENT INCREASE AGREEMENT, dated as of _____, 20____ (this “Commitment Increase Agreement”) is made by and among **SPARK HOLDCO, LLC**, a Delaware limited liability company, **SPARK ENERGY, LLC**, a Texas limited liability company, and **SPARK ENERGY GAS, LLC**, a Texas limited liability company (jointly, severally and together, the “Co-Borrowers,” and each individually, a “Co-Borrower”), **SPARK ENERGY, INC.** (“Parent”), a Delaware corporation, and each of the undersigned subsidiaries of Parent that are guarantors (the “Guarantors”), **SOCIÉTÉ GÉNÉRALE**, in its capacity as administrative agent under the Credit Agreement (as defined below) (in such capacity, the “Agent”), and _____ (the “Increasing Bank”). Reference is made to the Credit Agreement dated as of August 1, 2014, among Parent, the Co-Borrowers, the banks party thereto from time to time (the “Banks”), and the Agent (as the same may be amended or modified from time to time, the “Credit Agreement”). Capitalized terms used herein but not defined herein shall have the meanings specified by the Credit Agreement.

PRELIMINARY STATEMENTS

- A. Pursuant to Section 2.02 of the Credit Agreement, and subject to the terms and conditions thereof, the Co-Borrowers may request that the amount of the Commitments be increased.
- B. The Co-Borrowers have given notice to the Agent of such a request pursuant to Section 2.02 of the Credit Agreement.
- C. The terms and conditions of Section 2.02 have been met or satisfied, as applicable, and the Co-Borrowers, the Agent, and the Increasing Bank now wish to increase the Commitment of the Increasing Bank for the Co-Borrowers from \$ _____ to \$ _____.

AGREEMENT

- Increase of Commitments. Pursuant to Section 2.02 of the Credit Agreement, the Commitment of the Increasing Bank for the Co-Borrowers is hereby increased from \$ _____ to \$ _____.
- New Note. The Co-Borrowers agree to promptly execute and deliver to the Increasing Bank a new Note in the principal amount of the Increasing Bank’s Commitment (the “New Note”), and Increasing Bank agrees to return to the Co-Borrowers with reasonable promptness, the Note previously delivered to the Increasing Bank by the Co-Borrowers pursuant to Section 2.02 of the Credit Agreement.
- Governing Law. This Commitment Increase Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

Exhibit G

4. Bank Credit Decision. The Increasing Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank, and based on the Financial Statements referred to in Section 6.11 of the Credit Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Commitment Increase Agreement and to agree to the various matters set forth herein. The Increasing Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement.

5. Representations and Warranties of the Co-Borrowers. The Co-Borrowers represent and warrant that no Default has occurred and is continuing, or would result from the increase in Commitments described in this Commitment Increase Agreement.

6. Default. Without limiting any other event that may constitute an Event of Default, in the event any representation or warranty set forth herein shall prove to have been incorrect or misleading in any material respect when made, such event shall constitute an "Event of Default" under the Credit Agreement. This Commitment Increase Agreement is a "Loan Document" for all purposes.

7. Expenses. The Co-Borrowers agree to pay within ten (10) days of receipt of written demand therefore all costs and expenses of the Agent in connection with the preparation, execution and delivery of this Commitment Increase Agreement and the New Note, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

8. Counterparts; Facsimile Signature. The parties may execute this Commitment Increase Agreement in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. Delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Commitment Increase Agreement in the presence of the other parties to this Commitment Increase Agreement. This Commitment Increase Agreement is effective upon delivery of one fully executed counterpart to the Agent.

9. Increase Effective Date. The Increase Effective Date is _____, 20__.

[The Remainder of this Page Intentionally Left Blank]

Exhibit G

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

CO-BORROWERS:

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SPARK ENERGY, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

SPARK ENERGY GAS, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

GUARANTORS:

SPARK ENERGY, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

Exhibit G

AGENT:

SOCIÉTÉ GÉNÉRALE

By: _____
Name: _____
Title: _____

INCREASING BANK:

By: _____
Name: _____
Title: _____

Exhibit G

EXHIBIT H

FORM OF NEW BANK AGREEMENT

THIS NEW BANK AGREEMENT, dated as of _____, 20____ (this "New Bank Agreement") is made by and among **SPARK HOLDCO, LLC**, a Delaware limited liability company, **SPARK ENERGY, LLC**, a Texas limited liability company, and **SPARK ENERGY GAS, LLC**, a Texas limited liability company (jointly, severally and together, the "Co-Borrowers," and each individually, a "Co-Borrower"), **SPARK ENERGY, INC.** ("Parent"), a Delaware corporation, and each of the undersigned subsidiaries of Parent that are guarantors (the "Guarantors"), **SOCIÉTÉ GÉNÉRALE**, in its capacity as administrative agent under the Credit Agreement (as defined below) (in such capacity, the "Agent"), and _____ (the "New Bank"). Reference is made to the Credit Agreement dated as of August 1, 2014, among Parent, the Co-Borrowers, the banks party thereto from time to time (the "Banks"), and the Agent (as the same may be amended or modified from time to time, the "Credit Agreement"). Capitalized terms used herein but not defined herein shall have the meanings specified by the Credit Agreement.

PRELIMINARY STATEMENTS

A. Pursuant to Section 2.02 of the Credit Agreement, and subject to the terms and conditions thereof, financial institutions may become Banks with Commitments in the event the Co-Borrowers request an increase in the aggregate Commitments and certain other conditions are met and satisfied.

B. The Co-Borrowers have given notice to the Agent of such a request pursuant to Section 2.02 of the Credit Agreement.

C. The Co-Borrowers, the Agent, and the New Bank now wish to enter into this New Bank Agreement to add the New Bank as a Bank under the Credit Agreement and to establish a Commitment of \$ _____ for the New Bank in accordance with the terms and conditions of the Credit Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto agree as follows:

1. Addition of New Bank. Pursuant to Section 2.02 of the Credit Agreement, New Bank is hereby added to the Credit Agreement as a Bank with a Commitment of \$ _____. The New Bank specifies the following as its address for notices:

Attention: _____
Facsimile: _____

Exhibit H

2. Delivery of Note. The Co-Borrowers shall promptly execute and deliver to the New Bank a Note, dated as of the effective date of this New Bank Agreement, in the principal amount of the New Bank's Commitment set forth in Section 1 above.

3. Governing Law. This New Bank Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.

4. Bank Credit Decision. The New Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank, and based on the Financial Statements referred to in Section 6.11 of the Credit Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this New Bank Agreement and to agree to the various matters set forth herein. The New Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement.

5. Representations and Warranties of the Co-Borrowers. The Co-Borrowers represent and warrant as follows:

(a) the representations and warranties contained in the Credit Agreement, the Security Documents, the Guaranties, and each of the other Loan Documents are correct in all material respects on and as of the date of the addition of the New Bank as a Bank under the Credit Agreement and the establishment of the New Bank's Commitment pursuant to this New Bank Agreement, before and after giving effect to such events as though such representations and warranties were made on the date of such increase, except to the extent any such representations and warranties are expressly limited to an earlier date; and

(b) no Default has occurred and is continuing, or would result from the increase in Commitments described in this New Bank Agreement.

6. Appointment of Agent. The New Bank hereby appoints and authorizes the Agent to take such action as Agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to the Agent thereby, together with such powers and discretion as are reasonably incidental thereto.

7. Default. Without limiting any other event that may constitute an Event of Default, the Co-Borrowers acknowledge and agree that any representation or warranty made by the Co-Borrowers set forth in this New Bank Agreement that proves to have been incorrect or misleading in any material respect when made shall constitute an "Event of Default" under the Credit Agreement. This New Bank Agreement is a "Loan Document" for all purposes.

8. Expenses. The Co-Borrowers agree to pay within ten (10) days of receipt of written demand therefore all costs and expenses of the Agent in connection with the preparation, execution and delivery of this New Bank Agreement and the Note, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

Exhibit H

9. Counterparts; Facsimile Signature. The parties may execute this New Bank Agreement in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. Delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this New Bank Agreement in the presence of the other parties to this New Bank Agreement. This New Bank Agreement is effective upon delivery of one fully executed counterpart to the Agent.

10. Increase Effective Date. The Increase Effective Date is _____, 20__.

[The Remainder of this Page Intentionally Left Blank]

Exhibit H

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

CO-BORROWERS:

SPARK HOLDCO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SPARK ENERGY, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

SPARK ENERGY GAS, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

GUARANTORS:

SPARK ENERGY, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

Exhibit H

AGENT:

SOCIÉTÉ GÉNÉRALE

By: _____
Name: _____
Title: _____

NEW BANK:

By: _____
Name: _____
Title: _____

Exhibit H

EXHIBIT I

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “ Assignment ”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “ Assignor ”) and [*Insert name of Assignee*] (the “ Assignee ”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “ Credit Agreement ”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below, the interest in and to all of the Assignor’s rights and obligations under the Credit Agreement and any other documents or instruments delivered pursuant thereto that represents the amount and percentage interest identified below of all of the Assignor’s outstanding rights and obligations under the respective facilities identified below (including, to the extent included in any such facilities, letters of credit) (the “ Assigned Interest ”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, without representation or warranty by the Assignor.

- 1. Assignor: _____
- 2. Assignee: _____ [and is an Affiliate/Eligible Assignee ¹]
- 3. Co-Borrower(s): SPARK HOLDCO, LLC, a Delaware limited liability company, SPARK ENERGY, LLC, a Texas limited liability company, and SPARK ENERGY GAS, LLC, a Texas limited liability company
- 4. Administrative Agent: SOCIÉTÉ GÉNÉRALE, as administrative agent under the Credit Agreement
- 5. Credit Agreement: The Credit Agreement dated as of August 1, 2014, among Spark Energy, Inc., the Co-Borrowers, the Banks parties thereto and Société Générale, as Administrative Agent.

¹ Select as applicable.

6. Assigned Interest:

Aggregate Amount of Commitment/Loans for all Banks	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans ²
\$ _____	\$ _____	_____ %

Effective Date: _____, 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Title:

By: _____
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
Title:

² Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Banks thereunder.

[Consented to and] ³ Accepted:

SOCIÉTÉ GÉNÉRALE,
as Administrative Agent

By: _____
Title:

[Consented to:] ⁴

[Borrower Name]

By: _____
Title:

[SOCIÉTÉ GÉNÉRALE, as an Issuing Bank]

By: _____
Title:

[_____, as an Issuing Bank]

By: _____
Title:

³ To be added only if the consent of Administrative Agent is required by the terms of the Credit Agreement.

⁴ To be added only if the consent of Company and/or other parties (Issuing Bank) is required by the terms of the Credit Agreement.

SPARK HOLDCO, LLC, SPARK ENERGY, LLC, and SPARK ENERGY GAS, LLC
CREDIT AGREEMENT
DATED AS OF AUGUST 1, 2014
STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT
AND ASSUMPTION AGREEMENT

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with any Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or any other instrument or document delivered pursuant thereto, other than this Assignment (herein collectively the “Loan Documents”), or any collateral thereunder, (iii) the financial condition of Co-Borrowers, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by Co-Borrowers, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Bank under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and, to the extent of the Assigned Interest, shall have the obligations of a Bank thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 7.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision, and (v) if it is a Foreign Bank, attached to the Assignment is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Bank.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees

and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment. THIS ASSIGNMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) OF THE STATE OF NEW YORK.

Annex 1

EXHIBIT J-1

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “Credit Agreement”), by and among Spark Energy, Inc., Spark HoldCo, LLC, Spark Energy, LLC, Spark Energy Gas, LLC, Société Générale, and the other financial institutions which may become a party thereto.

Pursuant to the provisions of Section 9.10 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Co-Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Co-Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Co-Borrowers with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Co-Borrowers and the Agent, and (2) the undersigned shall have at all times furnished the Co-Borrowers and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF BANK]

By: _____
Name:
Title:

Date: _____, 20[]

Exhibit J-1

EXHIBIT J-2

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “Credit Agreement”), by and among Spark Energy, Inc., Spark HoldCo, LLC, Spark Energy, LLC, Spark Energy Gas, LLC, Société Générale, and the other financial institutions which may become a party thereto.

Pursuant to the provisions of Section 9.10 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Co-Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Co-Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Bank with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Bank in writing, and (2) the undersigned shall have at all times furnished such Bank with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, 20[]

Exhibit J-2

EXHIBIT J-3

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “Credit Agreement”), by and among Spark Energy, Inc., Spark HoldCo, LLC, Spark Energy, LLC, Spark Energy Gas, LLC, Société Générale, and the other financial institutions which may become a party thereto.

Pursuant to the provisions of Section 9.10 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Co-Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Co-Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Bank with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Bank and (2) the undersigned shall have at all times furnished such Bank with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, 20[]

Exhibit J-3

EXHIBIT J-4

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of August 1, 2014 (as amended or supplemented from time to time, the “Credit Agreement”), by and among Spark Energy, Inc., Spark HoldCo, LLC, Spark Energy, LLC, Spark Energy Gas, LLC, Société Générale, and the other financial institutions which may become a party thereto.

Pursuant to the provisions of Section 9.10 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Co-Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Co-Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Co-Borrowers with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Co-Borrowers and the Agent, and (2) the undersigned shall have at all times furnished the Co-Borrowers and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF BANK]

By: _____
Name:
Title:

Date: _____, 20[]

Exhibit J-4

TAX RECEIVABLE AGREEMENT

among

SPARK ENERGY, INC.,

SPARK HOLDCO, LLC,

CERTAIN MEMBERS OF SPARK HOLDCO, LLC,

and

W. KEITH MAXWELL III

DATED AS OF AUGUST 1, 2014

TAX RECEIVABLE AGREEMENT

This TAX RECEIVABLE AGREEMENT (this “Agreement”), dated as of August 1, 2014, is hereby entered into by and among Spark Energy, Inc., a Delaware corporation (the “Corporate Taxpayer”), Spark HoldCo, LLC, a Delaware limited liability company (“Spark HoldCo”), those members of Spark HoldCo set forth on Schedule A (the “Members”), and W. Keith Maxwell III (the “Agent”).

RECITALS

WHEREAS, the Members and the Corporate Taxpayer own limited liability company interests in Spark HoldCo (the “Spark HoldCo Units”), which is classified as a partnership for U.S. federal income Tax purposes;

WHEREAS, pursuant to the Transaction Agreement, dated as of June 18, 2014, by and among the Corporate Taxpayer and the Members, NuDevco Retail Holdings, LLC (“NDRH”) transferred 2,778 Spark HoldCo Units to the Corporate Taxpayer in exchange for a note from the Corporate Taxpayer (the “Pre-IPO Sale”);

WHEREAS, in connection with the Corporate Taxpayer’s initial public offering, NDRH shall sell the number of Spark HoldCo Units set forth in that agreement (which number shall be increased if the underwriters exercise their option to purchase additional shares of Class A common stock of the Corporate Taxpayer, par value \$0.01 per share (“Class A Shares”) from the Corporate Taxpayer) to the Corporate Taxpayer in exchange for cash (the “IPO Sale”);

WHEREAS, prior to the IPO Sale, the Corporate Taxpayer shall issue Class B common stock of the Corporate Taxpayer, par value \$0.01 per share (“Class B Shares”) to Spark HoldCo, and Spark HoldCo shall distribute such Class B Shares to NDRH and NuDevco Retail, LLC immediately prior to the IPO (the “Class B Shares Distribution”);

WHEREAS, pursuant to the Spark HoldCo LLC Agreement (as defined below), the Members will have the right to exchange (the “Exchange Right”) all or a portion of their Spark HoldCo Units (together with an equal number of Class B Shares) for, at the option of Spark HoldCo, either (i) Class A Shares or (ii) cash equal to the Cash Election Amount of such Class A Shares;

WHEREAS, pursuant to the Spark HoldCo LLC Agreement, following an exercise of the Exchange Right, the Corporate Taxpayer may, in its sole discretion, elect to purchase directly and acquire the Spark HoldCo Units (together with an equal number of Class B Shares) the subject of the exercise of the Exchange Right by paying to the exchanging Member, at the option of the Corporate Taxpayer, either (i) that number of Class A Shares such Member would otherwise receive pursuant to the exercise of the Exchange Right or (ii) cash equal to the Cash Election Amount of such Class A Shares (the “Call Right”);

WHEREAS, Spark HoldCo and each of its direct and indirect subsidiaries treated as a partnership, if any, has and will have in effect an election under Section 754 of the Internal Revenue Code of 1986, as amended (the “Code”), for each Taxable Year (as defined below) in which an Exchange occurs, which election is expected to result in an adjustment to the Tax basis of the assets owned by Spark HoldCo and such subsidiaries, solely with respect to Corporate Taxpayer;

WHEREAS, this Agreement is intended to set forth the agreements among the parties regarding the sharing of the Tax benefits realized by the Corporate Taxpayer as a result of any Exchange;

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I **DEFINITIONS**

Section 1.1 Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“Accrued Amount” is defined in Section 3.1(b) of this Agreement.

“Adjusted EBITDA” means net income before provision for income Taxes, interest expense, depreciation and amortization, less (i) customer acquisition costs incurred in the applicable period, (ii) net gain (loss) on derivative instruments, (iii) net current period cash settlements on derivative instruments during the applicable period, (iv) non-cash compensation expense and (v) other non-cash operating items.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“Agent” means W. Keith Maxwell III or any other entity or individual appointed by W. Keith Maxwell III.

“Agreed Rate” means LIBOR plus 200 basis points.

“Agreement” is defined in the Recitals of this Agreement.

“Amended Schedule” is defined in Section 2.3(b) of this Agreement.

“Assumed Tax Liability” is defined in the Spark HoldCo LLC Agreement.

A “Beneficial Owner” of a security is a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares: (i) voting power, which includes the power to vote, or to direct the voting of, such security and/or (ii) investment power, which includes the power to dispose of, or to direct the disposition of, such security. The terms “Beneficially Own” and “Beneficial Ownership” shall have correlative meanings.

“Board” means the Board of Directors of the Corporate Taxpayer.

“Business Day” means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of Texas shall not be regarded as a Business Day.

“Call Right” is defined in the Recitals of this Agreement.

“Cash Available for Distribution” means the Adjusted EBITDA of Spark HoldCo for the applicable period, less: (i) cash interest paid by Spark HoldCo, (ii) capital expenditures of Spark HoldCo (exclusive of customer acquisition costs) and (iii) any Taxes payable by Spark HoldCo.

“Cash Election Amount” is defined in the Spark HoldCo LLC Agreement.

“Change of Control” means the occurrence of any of the following events:

- (i) any Person or any group of Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Securities and Exchange Act of 1934, or any successor provisions thereto, excluding a group of Persons which includes one or more Affiliates of W. Keith Maxwell III, is or becomes the Beneficial Owner, directly or indirectly, of securities of the Corporate Taxpayer representing more than 50% of the combined voting power of the Corporate Taxpayer’s then outstanding voting securities; or
- (ii) there is consummated a merger or consolidation of the Corporate Taxpayer with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (A) the Board immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (B) the voting securities of the Corporate Taxpayer immediately prior to such merger or consolidation do not continue to represent or are not converted into more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof; or
- (iii) the shareholders of the Corporate Taxpayer approve a plan of complete liquidation or dissolution of the Corporate Taxpayer or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Corporate Taxpayer of all or substantially all of the Corporate Taxpayer’s assets, other than such sale or other disposition by the Corporate Taxpayer of all or substantially all of the Corporate Taxpayer’s assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by shareholders of the Corporate Taxpayer in substantially the same proportions as their ownership of the Corporate Taxpayer immediately prior to such sale.

Notwithstanding the foregoing, except with respect to clause (ii)(A) above, a “Change of Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the shares of the Corporate Taxpayer immediately prior to such transaction or series of transactions

continue to have substantially the same proportionate ownership in, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporate Taxpayer immediately following such transaction or series of transactions.

“Class A Shares” is defined in the Recitals of this Agreement.

“Class B Shares” is defined in the Recitals of this Agreement.

“Class B Shares Distribution” is defined in the Recitals of this Agreement.

“Code” is defined in the Recitals of this Agreement.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Corporate Taxpayer” is defined in the Recitals of this Agreement.

“Corporate Taxpayer Return” means any Tax Return of the Corporate Taxpayer relating to a Tax imposed by the United States or any subdivision thereof.

“Cumulative Net Realized Tax Benefit” for a Taxable Year means the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporate Taxpayer, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedule or Amended Schedule, if any, in existence at the time of such determination.

“Default Rate” means LIBOR plus 500 basis points.

“Deferred TRA Amount” is defined in Section 3.5(a). For the avoidance of doubt, any reference to Tax Benefit Payments in this Agreement shall include any Deferred TRA Amount.

“Deferred TRA Payment Date” is defined in Section 3.5(b).

“Determination” shall have the meaning ascribed to such term in Section 1313(a) of the Code or similar provision of U.S. state or local Tax law, as applicable, or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax.

“Dispute” has the meaning set forth in Section 7.8(a) of this Agreement.

“Early Termination Date” means the date of an Early Termination Notice for purposes of determining the Early Termination Payment.

“Early Termination Effective Date” is defined in Section 4.2 of this Agreement.

“Early Termination Notice” is defined in Section 4.2 of this Agreement.

“Early Termination Payment” is defined in Section 4.3(b) of this Agreement.

“Early Termination Schedule” is defined in Section 4.2 of this Agreement.

“Exchange” means (i) any sale or deemed sale for U.S. federal income tax purposes resulting from the Pre-IPO Sale, the IPO Sale and the Class B Shares Distribution and (ii) any exchange by a Member, pursuant to either the Exchange Right or the Call Right, as applicable, of all or a portion of its Spark HoldCo Units (together with an equal number of Class B Shares) for, at the option of Spark HoldCo or the Corporate Taxpayer, as applicable, either (A) Class A Shares or (B) cash equal to the Cash Election Amount of such Class A Shares.

“Exchange Basis Adjustment” means any adjustment to the Tax basis of a Reference Asset as a result of an Exchange (as calculated under Section 2.1 of this Agreement), including, but not limited to: (i) under Sections 743(b) and 754 of the Code (including in situations where, following an Exchange, Spark HoldCo remains in existence as an entity for Tax purposes); (ii) under Section 732(b) of the Code (in situations where, as a result of one or more Exchanges, Spark HoldCo becomes an entity that is disregarded as separate from its owner for Tax purposes); (iii) under Section 707(a)(2)(B) of the Code; (iv) under Section 737 of the Code; (v) if the IPO Sale were characterized as if the Corporate Taxpayer purchased an interest in each of the Company’s assets from NDRH’s U.S. federal income tax owner and immediately thereafter the Corporate Taxpayer and NDRH’s U.S. federal income tax owner contributed their respective interests in the Company’s assets to the Company in exchange for Spark HoldCo Units (as described in Situation 1 of Rev. Rul. 99-5, 1999-1 C.B. 434); and (vi) in each case, comparable provisions of U.S. state or local Tax laws. Notwithstanding any other provision of this Agreement, the amount of any Exchange Basis Adjustment resulting from an Exchange of one or more Spark HoldCo Units shall be determined without regard to any Pre-Exchange Transfer of such Spark HoldCo Units and as if any such Pre-Exchange Transfer had not occurred.

“Exchange Basis Schedule” is defined in Section 2.1 of this Agreement.

An “Exchange Date” means each date on which an Exchange occurs.

“Exchange Right” is defined in the Recitals of this Agreement.

“Exchange Tax Basis” means, with respect to any Reference Asset at any time, the Tax basis that such asset would have had at such time if no Exchange Basis Adjustments had been made.

“Expert” is defined in Section 7.9 of this Agreement.

“Five-Year Deferral Period” means the period beginning on October 1, 2014 and ending on September 30, 2019.

“Hypothetical Tax Liability” means, with respect to any Taxable Year, the liability for Taxes of (i) the Corporate Taxpayer and (ii) without duplication, Spark HoldCo, but only with respect to Taxes imposed on Spark HoldCo and allocable to the Corporate Taxpayer, in each case using the same methods, elections, conventions and similar practices used on the relevant Corporate Taxpayer Return, but (A) using the Exchange Tax Basis as reflected on the Exchange Basis Schedule including amendments thereto for the Taxable Year and (B) excluding any deduction attributable to Imputed Interest for the Taxable Year. For the avoidance of doubt,

Hypothetical Tax Liability shall be determined without taking into account the carryover or carryback of any Tax item (or portions thereof) that is attributable to the Exchange Basis Adjustment or Imputed Interest.

“Imputed Interest” shall mean any interest imputed under Section 1272, 1274 or 483 or other provision of the Code and any similar provision of U.S. state or local Tax law with respect to the Corporate Taxpayer’s payment obligations under this Agreement.

“IPO” means the initial public offering of Class A Shares by the Corporate Taxpayer

“IPO Date” means the closing date of the IPO.

“IPO Sale” is defined in the Recitals of this Agreement.

“IRS” means the U.S. Internal Revenue Service.

“LIBOR” means during any period, an interest rate per annum equal to the one-year LIBOR rate reported, on the date two (2) calendar days prior to the first day of such period, on the Telerate Page 3750 (or if such screen shall cease to be publicly available, as reported on Reuters Screen page “LIBOR01” or by any other publicly available source of such market rate) for London interbank offered rates for United States dollar deposits for such period; provided, however, that for purposes of calculating the Early Termination Payment “LIBOR” means the rate for U.S. dollar swaps with a maturity of 30 years that appears on Reuters Screen page “ISDAFIX1” under the heading “30YR” as of 11 a.m. New York City time on the date two (2) business days prior to the Early Termination Date (or if such screen shall cease to be publicly available, by any other publicly available source of such market rate).

“Market Value” shall mean the closing price of the Class A Shares on the applicable Exchange Date on the national securities exchange or interdealer quotation system on which such Class A Shares are then traded or listed, as reported by the Wall Street Journal; provided, that if the closing price is not reported by the Wall Street Journal for the applicable Exchange Date, then the Market Value shall mean the closing price of the Class A Shares on the Business Day immediately preceding such Exchange Date on the national securities exchange or interdealer quotation system on which such Class A Shares are then traded or listed, as reported by the Wall Street Journal; provided further that if the Class A Shares are not then listed on a national securities exchange or interdealer quotation system, “Market Value” shall mean the cash consideration paid for Class A Shares, or the fair market value of the other property delivered for Class A Shares, as determined by the Board in good faith.

“Material Objection Notice” has the meaning set forth in Section 4.2 of this Agreement.

“Member” is defined in the Recitals of this Agreement.

“NDRH” is defined in the Recitals of this Agreement.

“Net Tax Benefit” is defined in Section 3.1(b) of this Agreement.

“Objection Notice” has the meaning set forth in Section 2.3(a) of this Agreement.

“Opt Out Notice” is defined in Section 3.4(a) of this Agreement.

“Payment Date” means any date on which a payment is required to be made pursuant to this Agreement.

“Person” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

“Pre-Exchange Transfer” means any transfer or distribution in respect of Spark HoldCo Units (i) that occurs prior to an Exchange of such Spark HoldCo Units, and (ii) to which Section 743(b) of the Code applies.

“Pre-IPO Sale” is defined in the Recitals of this Agreement.

“Qualified Tax Advisor” means Vinson & Elkins L.L.P. or any other law or accounting firm that is nationally recognized as being expert in Tax matters and that is reasonably acceptable to the Corporate Taxpayer

“Quarterly Distribution Date” is defined in the Spark HoldCo LLC Agreement.

“Realized Tax Benefit” means, for a Taxable Year, the excess, if any, of the Hypothetical Tax Liability over the actual liability for Taxes of (i) the Corporate Taxpayer and (ii) without duplication, Spark HoldCo, but for purposes of clause (ii), only with respect to Taxes imposed on Spark HoldCo and allocable to the Corporate Taxpayer for such Taxable Year. If all or a portion of the actual liability for such Taxes for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination.

“Realized Tax Detriment” means, for a Taxable Year, the excess, if any, of the actual liability for Taxes of (i) the Corporate Taxpayer and (ii) without duplication, Spark HoldCo, but for purposes of clause (ii), only with respect to Taxes imposed on Spark HoldCo and allocable to the Corporate Taxpayer for such Taxable Year, over the Hypothetical Tax Liability for such Taxable Year. If all or a portion of the actual liability for such Taxes for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination.

“Reconciliation Dispute” has the meaning set forth in Section 7.9 of this Agreement.

“Reconciliation Procedures” has the meaning set forth in Section 2.3(a) of this Agreement.

“Reference Asset” means an asset that is held by Spark HoldCo, or by any of its direct or indirect subsidiaries treated as a partnership or disregarded entity for purposes of the applicable Tax, at the time of an Exchange. A Reference Asset also includes any asset that is “substituted basis property” under Section 7701(a)(42) of the Code with respect to a Reference Asset.

“Schedule” means any of the following: (i) an Exchange Basis Schedule, (ii) a Tax Benefit Schedule, or (iii) the Early Termination Schedule.

“Senior Obligations” is defined in Section 5.1 of this Agreement.

“Spark HoldCo” is defined in the Recitals of this Agreement.

“Spark HoldCo LLC Agreement” means the Second Amended and Restated Limited Liability Company Agreement of Spark HoldCo.

“Spark HoldCo Units” is defined in the Recitals of this Agreement.

“Subsequent Due Date” is defined in Section 4.1(b) of this Agreement.

“Subsidiaries” means, with respect to any Person, as of any date of determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise controls more than 50% of the voting power or other similar interests or the sole general partner interest or managing member or similar interest of such Person.

“Target Distribution” means target distributions with respect to Class A Shares of \$0.3625 per share per quarter.

“Tax Benefit Payment” is defined in Section 3.1(b) of this Agreement.

“Tax Benefit Schedule” is defined in Section 2.2 of this Agreement.

“Tax Return” means any return, declaration, report or similar statement required to be filed with respect to Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

“Taxable Year” means a taxable year of the Corporate Taxpayer as defined in Section 441(b) of the Code or comparable section of U.S. state or local Tax law, as applicable (and, therefore, for the avoidance of doubt, may include a period of less than twelve (12) months for which a Tax Return is made), ending on or after the IPO Date.

“Taxes” means any and all taxes, assessments or similar charges imposed by the United States or any subdivision thereof that are based on or measured with respect to net income or profits, and any interest related to such Tax.

“Taxing Authority” shall mean any federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

“Tax Distribution Date” is defined in the Spark HoldCo LLC Agreement.

“Total Distributions” means the aggregate distributions of Spark HoldCo necessary to cause the Corporate Taxpayer to receive distributions of cash equal to (i) the Target Distribution on each Quarterly Distribution Date during the applicable four-quarter period, plus (ii) its Assumed Tax Liability on each Tax Distribution Date during such four-quarter period, plus (iii) the expected Tax Benefit Payment payable during the calendar year for which the TRA Coverage Ratio is being tested.

“TRA Coverage Ratio” is defined in Section 3.5(a).

“TRA Holder” means the Members and their respective successors and assigns pursuant to Section 7.6(a).

“Treasury Regulations” means the final, temporary and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant Taxable Year.

“Valuation Assumptions” shall mean, as of an Early Termination Date, the assumptions that (i) in each Taxable Year ending on or after such Early Termination Date, the Corporate Taxpayer will have taxable income sufficient to fully utilize the deductions arising from the Exchange Basis Adjustments and the Imputed Interest during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, Exchange Basis Adjustments and Imputed Interest that would result from future Tax Benefit Payments that would be paid in accordance with the Valuation Assumptions) in which such deductions would become available, (ii) the U.S. federal income tax rates and state and local income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Date, (iii) any loss carryovers generated by any Exchange Basis Adjustment or Imputed Interest and available as of the date of the Early Termination Schedule will be utilized by the Corporate Taxpayer on a pro rata basis from the date of the Early Termination Schedule through the scheduled expiration date of such loss carryovers, (iv) any non-amortizable assets will be disposed of on the fifteenth anniversary of the applicable Basis Adjustment, and (v) if, at the Early Termination Date, there are Spark HoldCo Units that have not been Exchanged, then each such Spark HoldCo Units shall be deemed to be Exchanged for the Market Value of the Class A Shares and the amount of cash that would be transferred if the Exchange occurred on the Early Termination Date.

Section 1.2 Other Definitional and Interpretative Provisions. The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively.

ARTICLE II
DETERMINATION OF CERTAIN REALIZED TAX BENEFIT

Section 2.1 Basis Adjustment Schedule. Within sixty (60) calendar days after the filing of the U.S. federal income Tax Return of the Corporate Taxpayer for each Taxable Year in which any Exchange has been effected, the Corporate Taxpayer shall deliver to Agent a schedule (the “Exchange Basis Schedule”) that shows, in reasonable detail necessary to perform the calculations required by this Agreement, including with respect to each Exchanging Person, (i) the Exchange Tax Basis of the Reference Assets as of each applicable Exchange Date, (ii) the Exchange Basis Adjustments with respect to the Reference Assets as a result of the Exchanges effected in such Taxable Year, calculated in the aggregate, (iii) the period (or periods) over which the Reference Assets are amortizable and/or depreciable and (iv) the period (or periods) over which each Exchange Basis Adjustment is amortizable and/or depreciable. For the avoidance of doubt, payments made under this Agreement shall not be treated as resulting in an Exchange Basis Adjustment to the extent such payments are treated as Imputed Interest.

Section 2.2 Tax Benefit Schedule. Within sixty (60) calendar days after the filing of the U.S. federal income Tax Return of the Corporate Taxpayer for any Taxable Year in which there is a Realized Tax Benefit or Realized Tax Detriment, the Corporate Taxpayer shall provide to Agent: (i) a schedule showing, in reasonable detail, the calculation of the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year (a “Tax Benefit Schedule”), (ii) the Corporate Taxpayer Return, (iii) a reasonably detailed calculation by the Corporate Taxpayer of the Hypothetical Tax Liability, (iv) a reasonably detailed calculation by the Corporate Taxpayer of the actual Tax liability, and (v) any other work papers requested by Agent. In addition, the Corporate Taxpayer shall allow Agent reasonable access at no cost to the appropriate representatives of the Corporate Taxpayer in connection with a review of such Tax Benefit Schedule. The Tax Benefit Schedule will become final as provided in Section 2.3(a) and may be amended as provided in Section 2.3(b) (subject to the procedures set forth in Section 2.3(b)).

Section 2.3 Procedure; Amendments.

(a) Procedure. An applicable Schedule or amendment thereto shall become final and binding on all parties thirty (30) calendar days from the first date on which Agent has received the applicable Schedule or amendment thereto unless Agent (i) within thirty (30) calendar days after receiving an applicable Schedule or amendment thereto, provides the Corporate Taxpayer with notice of a material objection to such Schedule (“Objection Notice”) made in good faith or (ii) provides a written waiver of such right of any Objection Notice within the period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date the waiver is received by the Corporate Taxpayer. If the parties, for any reason, are unable to successfully resolve the issues raised in an Objection Notice within thirty (30) calendar days after receipt by the Corporate Taxpayer of such Objection Notice, the Corporate Taxpayer and Agent shall employ the reconciliation procedures described in Section 7.9 of this Agreement (the “Reconciliation Procedures”).

(b) Amended Schedule. The applicable Schedule for any Taxable Year may be amended from time to time by the Corporate Taxpayer (i) in connection with a Determination affecting such Schedule, (ii) to correct material inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was provided to Agent, (iii) to comply with the Expert's determination under the Reconciliation Procedures, (iv) to reflect a material change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other Tax item to such Taxable Year, (v) to reflect a material change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year or (vi) to adjust an Exchange Basis Schedule to take into account payments made pursuant to this Agreement (any such Schedule, an "Amended Schedule").

ARTICLE III TAX BENEFIT PAYMENTS

Section 3.1 Payments.

(a) Payments. Subject to Section 3.5, within five (5) calendar days after a Tax Benefit Schedule delivered to Agent becomes final in accordance with Section 2.3(a), the Corporate Taxpayer shall pay to each TRA Holder its proportionate share of the Tax Benefit Payment determined pursuant to Section 3.1(b) for such Taxable Year. Each such payment shall be made by wire transfer of immediately available funds to the bank account previously designated by the TRA Holder to the Corporate Taxpayer or as otherwise agreed by the Corporate Taxpayer and the TRA Holder. For the avoidance of doubt, no Tax Benefit Payment shall be made in respect of estimated Tax payments, including, without limitation, U.S. federal estimated income Tax payments. Notwithstanding the foregoing, the Corporate Taxpayer shall have no obligation to make a Tax Benefit Payment with respect to a Taxable Year prior to December 19 of the subsequent calendar year.

(b) A "Tax Benefit Payment" means the sum of the Net Tax Benefit and the Accrued Amount. Subject to Section 3.3, the "Net Tax Benefit" for a Taxable Year shall be an amount equal to the excess, if any, of 85% of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year over the total amount of payments previously made under this Section 3.1 (excluding payments attributable to Accrued Amounts); provided, for the avoidance of doubt, that a TRA Holder shall not be required to return any portion of any previously made Tax Benefit Payment. The "Accrued Amount" shall equal the interest on the Net Tax Benefit calculated at the Agreed Rate from the due date (without extensions) for filing the Corporate Taxpayer Return with respect to Taxes for such Taxable Year until the Payment Date. For the avoidance of doubt, for Tax purposes, the Accrued Amount shall not be treated as interest but shall instead be treated as additional consideration for the acquisition of Spark HoldCo Units in an Exchange unless otherwise required by law.

Section 3.2 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under this Agreement. It is also intended that the provisions of this Agreement will result in 85% of the Cumulative Net Realized Tax Benefit, and the Accrued Amount thereon, being paid to the TRA Holders pursuant to this Agreement. The provisions of this Agreement shall be construed in the appropriate manner to achieve these fundamental results.

Section 3.3 Proportionate Share and Pro Rata Payments.

(a) Proportionate Share. For purposes of this Agreement, a TRA Holder's "proportionate share" for any Taxable Year equals (i) the deductions available for use in such Taxable Year associated with the Exchange Basis Adjustments and the Imputed Interest attributable to such TRA Holder, divided by (ii) the deductions associated with all Exchange Basis Adjustments and all Imputed Interest that are available for use in such Taxable Year.

(b) Pro Rata Payments. If the Corporate Taxpayer lacks sufficient funds to satisfy or is prevented under any credit agreement or other arrangement from satisfying its obligations to make all Tax Benefit Payments due in a particular Taxable Year, each TRA Holder shall receive its proportionate share of the total funds available in the Taxable Year to make the Tax Benefit Payments.

Section 3.4 Opt Out.

(a) Notwithstanding Section 3.1, prior to an Exchange, a TRA Holder may elect not to receive any payments under this Agreement with respect to such Exchange, by delivering written notice evidencing such election (an "Opt Out Notice") to the Corporate Taxpayer at least three Business Days prior to the Exchange Date of the relevant Exchange. An Opt Out Notice, when delivered, shall be irrevocable.

(b) This Agreement shall not apply to any Exchange which is covered by an Opt Out Notice delivered pursuant to Section 3.4(a), and all computations hereunder, including the computation of any Tax Benefit Payments and determination of any amounts attributable to a TRA Holder, shall be made without taking into account Exchanges covered by such Opt Out Notice. For the avoidance of doubt, a TRA Holder who makes an election pursuant to Section 3.4(a) shall remain entitled to payments under this Agreement with respect to any Exchanges for which no election has been made pursuant to Section 3.4(a).

Section 3.5 Five-Year Deferral Period.

(a) Any Tax Benefit Payment that would otherwise be due and payable pursuant to Section 3.1(a) during the Five-Year Deferral Period shall be reduced to the extent necessary to cause the TRA Coverage Ratio with respect to such Tax Benefit Payment to be met. The "TRA Coverage Ratio" shall be met with respect to a Tax Benefit Payment if Cash Available for Distribution during the four-quarter period ending on September 30 of the calendar year in which such Tax Benefit Payment would be due and payable equals or exceeds 130% of the Total Distributions for such four-quarter period. The cumulative amount by which any Tax Benefit Payments are reduced pursuant this Section 3.5(a) is referred to herein as the "Deferred TRA Amount." For the avoidance of doubt, in the event that the TRA Coverage Ratio is met with respect to any portion of a Tax Benefit Payment, that portion of the Tax Benefit Payment shall be due and payable under Section 3.1(a), with the remainder being added to the Deferred TRA Amount.

(b) Subject to Section 3.5(c), the Corporate Taxpayer shall pay the Deferred TRA Amount as soon as practicable following the expiration of the Five-Year Deferral Period and in no event later than October 10, 2019 (the date of such actual payment, the “Deferred TRA Payment Date”).

(c) The Deferred TRA Amount shall not exceed (i) the lesser of (A) the Corporate Taxpayer’s proportionate share of the aggregate Cash Available for Distribution during the Five-Year Deferral Period or (B) the cash distributions from Spark HoldCo actually received by the Corporate Taxpayer during the Five-Year Deferral Period, reduced by (ii) the sum of (A) the aggregate of the Target Distributions on each Quarterly Distribution Date during the Five-Year Deferral Period, plus (B) the Corporate Taxpayer’s Assumed Tax Liability on each Tax Distribution Date during the Five-Year Deferral period, plus (C) all prior Tax Benefit Payments.

(d) For purposes of illustration, sample calculations of the TRA Coverage Ratio and examples of non-deferral, full deferral, and partial deferral are set forth in Schedule B attached hereto.

ARTICLE IV **TERMINATION**

Section 4.1 Early Termination, Breach of Agreement and Payment Related to Change of Control.

(a) The Corporate Taxpayer may terminate this Agreement at any time by paying to each TRA Holder its proportionate share of the Early Termination Payment. Upon payment of the Early Termination Payment by the Corporate Taxpayer, the Corporate Taxpayer shall not have any further payment obligations under this Agreement, other than for (i) any Tax Benefit Payment agreed to by the Corporate Taxpayer acting in good faith and any TRA Holder as due and payable but unpaid as of the Early Termination Notice and (ii) any Tax Benefit Payment due for the Taxable Year ending with or including the date of the Early Termination Notice (except to the extent that the amount described in clause (ii) is included in the Early Termination Payment). Upon payment of all amounts provided for in this Section 4.1(a), this Agreement shall terminate.

(b) In the event that the Corporate Taxpayer breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due, failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise, then all obligations hereunder shall be accelerated and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such breach and shall include, but shall not be limited to, (i) the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the date of a breach, (ii) any Tax Benefit Payment agreed to by the Corporate Taxpayer acting in good faith and any TRA Holder as due and payable but unpaid as of the date of a breach, and (iii) any Tax Benefit Payment due for the Taxable Year ending with or including the date of a breach. Notwithstanding the foregoing, in the event that the Corporate Taxpayer breaches this Agreement, the TRA Holders shall be entitled to elect to receive the amounts set forth in clauses (i), (ii) and (iii) above or to seek specific performance of the terms

hereof. The parties agree that the failure to make any payment due pursuant to this Agreement within three (3) months of the date such payment is due shall be deemed to be a breach of a material obligation under this Agreement for all purposes of this Agreement, and that it shall not be considered to be a breach of a material obligation under this Agreement to make a payment due pursuant to this Agreement within three (3) months of the date such payment is due. Notwithstanding anything in this Agreement to the contrary, it shall not be a breach of this Agreement if the Corporate Taxpayer fails to make any Tax Benefit Payment when due to the extent that the Corporate Taxpayer has insufficient funds to make such payment; provided that the interest provisions of Section 5.2 shall apply to such late payment (unless the Corporate Taxpayer does not have sufficient cash to make such payment as a result of limitations imposed by existing credit agreements to which Spark HoldCo or any Subsidiary of Spark HoldCo is a party, in which case Section 5.2 shall apply, but the Default Rate shall be replaced by the Agreed Rate); provided further that it shall be a breach of this Agreement, and the provisions in the first two sentences of this Section 4.1(b) shall apply as of the original due date of the Tax Benefit Payment, if the Corporate Taxpayer makes any distribution of cash or other property to its shareholders in excess of the Target Distribution while any Tax Benefit Payment is due and payable but unpaid. Any Tax Benefit Payment that is not paid when due pursuant to this Section 4.1(b) shall be due on the date of the next Tax Benefit Payment (the “Subsequent Due Date”). If all or a portion of any Tax Benefit Payment is not made to any TRA Holder on the Subsequent Due Date, such payment may be further deferred pursuant to the provisions of this Section 4.1(b) and shall continue to accrue interest pursuant to Section 5.2.

(c) The Corporate Taxpayer and each TRA Holder hereby acknowledges that, as of the date of this Agreement, the aggregate value of the Tax Benefit Payments cannot reasonably be ascertained for U.S. federal income Tax or other applicable Tax purposes.

(d) In the event of a Change of Control, all obligations hereunder shall be accelerated and such obligations shall be calculated pursuant to this Article IV as if an Early Termination Notice had been delivered on the closing date of the Change of Control and shall include, but not be limited to, (i) the Early Termination Payment calculated as if an Early Termination Notice had been delivered on the effective date of a Change of Control, (ii) any Tax Benefit Payment in respect of a TRA Holder agreed to by the Corporation and such TRA Holder as due and payable but unpaid as of the Early Termination Notice and (iii) any Tax Benefit Payment due for any Taxable Year ending prior to, with or including the effective date of a Change of Control. In the event of a Change of Control, the Early Termination Payment shall be calculated utilizing the Valuation Assumptions and by substituting in each case the terms “the closing date of a Change of Control” for an “Early Termination Date.”

Section 4.2 Early Termination Notice. If the Corporate Taxpayer chooses to exercise its right of early termination under Section 4.1(a) above, the Corporate Taxpayer shall deliver to Agent notice of such intention to exercise such right (the “Early Termination Notice”) and a schedule (the “Early Termination Schedule”) specifying the Corporate Taxpayer’s intention to exercise such right and showing in reasonable detail the calculation of the Early Termination Payment. The Early Termination Schedule shall become final and binding on all parties thirty (30) calendar days from the first date on which Agent has received such Schedule or amendment thereto unless Agent (i) within thirty (30) calendar days after receiving the Early Termination

Schedule, provides the Corporate Taxpayer with notice of a material objection to such Schedule made in good faith (“Material Objection Notice”) or (ii) provides a written waiver of such right of a Material Objection Notice within the period described in clause (i) above, in which case such Schedule becomes binding on the date the waiver is received by the Corporate Taxpayer (the “Early Termination Effective Date”). If the parties, for any reason, are unable to successfully resolve the issues raised in such notice within thirty (30) calendar days after receipt by the Corporate Taxpayer of the Material Objection Notice, the Corporate Taxpayer and Agent shall employ the Reconciliation Procedures.

Section 4.3 Payment upon Early Termination.

(a) Within three (3) calendar days after the Early Termination Effective Date, the Corporate Taxpayer shall pay to each TRA Holder its Early Termination Payment. Each such payment shall be made by wire transfer of immediately available funds to a bank account or accounts designated by the TRA Holder or as otherwise agreed by the Corporate Taxpayer and the TRA Holder.

(b) “Early Termination Payment” shall equal, with respect to each TRA Holder, the present value, discounted at the Agreed Rate as of the Early Termination Date, of all Tax Benefit Payments that would be required to be paid by the Corporate Taxpayer to the TRA Holder beginning from the Early Termination Date and assuming that the Valuation Assumptions are applied; provided that, in the event the Early Termination Effective Date occurs prior to or on the same date as the Deferred TRA Payment Date, the Deferred TRA Amount shall be included in the Early Termination Payment without regard to the limitations set forth in Section 3.5(c).

ARTICLE V
SUBORDINATION AND LATE PAYMENTS

Section 5.1 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment, Deferred TRA Amount or Early Termination Payment required to be made by the Corporate Taxpayer to any TRA Holder under this Agreement shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any obligations in respect of indebtedness for borrowed money of the Corporate Taxpayer and its Subsidiaries (“Senior Obligations”) and shall rank pari passu with all current or future unsecured obligations of the Corporate Taxpayer that are not Senior Obligations. For the avoidance of doubt, notwithstanding the above, the determination of whether it is a breach of this Agreement if the Corporate Taxpayer fails to make any Tax Benefit Payment when due is governed by Section 4.1(b).

Section 5.2 Late Payments by the Corporate Taxpayer. The amount of all or any portion of any Tax Benefit Payment, Deferred TRA Amount or Early Termination Payment not made to any TRA Holder when due under the terms of this Agreement shall be payable together with any interest thereon, computed at the Default Rate (or, if so provided in Section 4.1(b), at the Agreed Rate) and commencing from the date on which such Tax Benefit Payment, Deferred TRA Amount or Early Termination Payment was due and payable. For the avoidance of doubt, no interest (other than the Accrued Amount) shall accrue on any Deferred TRA Amount during the Five-Year Deferral Period, but interest shall accrue as provided in this Section 5.2 on the amount of all or any portion of any Deferred TRA Amount not made to any TRA Holder as provided in Section 3.5(b).

ARTICLE VI
NO DISPUTES; CONSISTENCY; COOPERATION

Section 6.1 Participation in the Corporate Taxpayer's and Spark HoldCo's Tax Matters. Except as otherwise provided herein, the Corporate Taxpayer shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporate Taxpayer and Spark HoldCo, including without limitation the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to Taxes. Notwithstanding the foregoing, the Corporate Taxpayer shall notify Agent of, and keep Agent reasonably informed with respect to, the portion of any audit of the Corporate Taxpayer and Spark HoldCo by a Taxing Authority the outcome of which is reasonably expected to affect the rights and obligations of the TRA Holders under this Agreement, and shall provide to Agent reasonable opportunity to provide information and other input to the Corporate Taxpayer, Spark HoldCo and their respective advisors concerning the conduct of any such portion of such audit; provided, however, that the Corporate Taxpayer and Spark HoldCo shall not be required to take any action that is inconsistent with any provision of the Spark HoldCo LLC Agreement.

Section 6.2 Consistency. Except upon the written advice of a Qualified Tax Advisor, and except for items that are explicitly characterized as "deemed" or in a similar manner by the terms of this Agreement, the Corporate Taxpayer and the TRA Holders agree to report and cause to be reported for all purposes, including U.S. federal, state, local and non-U.S. Tax purposes and financial reporting purposes, all Tax-related items (including, without limitation, the Reference Assets and each Tax Benefit Payment) in a manner consistent with that specified by the Corporate Taxpayer in any Schedule required to be provided by or on behalf of the Corporate Taxpayer under this Agreement. Any Dispute concerning such advice shall be subject to the terms of Section 7.9.

Section 6.3 Cooperation. Each TRA Holder shall (i) furnish to the Corporate Taxpayer in a timely manner such information, documents and other materials as the Corporate Taxpayer may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any audit, examination or controversy with any Taxing Authority, (ii) make itself available to the Corporate Taxpayer and its representatives to provide explanations of documents and materials and such other information as the Corporate Taxpayer or its representatives may reasonably request in connection with any of the matters described in clause (i) above, and (iii) reasonably cooperate in connection with any such matter, and the Corporate Taxpayer shall reimburse the TRA Holder for any reasonable third-party costs and expenses incurred pursuant to this Section 6.3.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed duly given and received (i) on the date of delivery if delivered personally, or by facsimile upon confirmation of transmission by the sender's fax machine if sent on a Business Day (or otherwise on the next Business Day) or (ii) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to the Corporate Taxpayer, to:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: General Counsel

with a copy (which shall not constitute notice to the Corporate Taxpayer) to:

Vinson & Elkins L.L.P. 1001
Fannin, Suite 2500
Houston, Texas 77002-6760
Telephone: 713-758-2977
Attention: Sarah Morgan

If to Agent, to:

W. Keith Maxwell III
2105 CityWest Blvd, Suite 100
Houston, Texas 77042

If to a TRA Holder, other than Agent, that is a partner in Spark HoldCo, to:

The address set forth in the records of Spark HoldCo.

Any party may change its address or fax number by giving the other party written notice of its new address or fax number in the manner set forth above.

Section 7.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 7.3 Entire Agreement; No Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Texas, without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section 7.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.6 Successors; Assignment; Amendments; Waivers.

(a) No TRA Holder may assign this Agreement to any person without the prior written consent of the Corporate Taxpayer; provided, however, that (i) to the extent Spark HoldCo Units are transferred in accordance with the terms of the Spark HoldCo LLC Agreement, the transferring TRA Holder shall have the option to assign to the transferee of such Spark HoldCo Units the transferring TRA Holder's rights under this Agreement with respect to such transferred Spark HoldCo Units as long as such transferee has executed and delivered, or, in connection with such transfer, executes and delivers, a joinder to this Agreement, in form and substance reasonably satisfactory to the Corporate Taxpayer, agreeing to become a "TRA Holder" for all purposes of this Agreement, except as otherwise provided in such joinder, and (ii) any and all payments payable or that may become payable to a TRA Holder pursuant to this Agreement (A) that do not arise from an Exchange and (B) that, once an Exchange has occurred, arise with respect to the Exchanged Spark HoldCo Units, may be assigned to any Person or Persons as long as any such Person has executed and delivered, or, in connection with such assignment, executes and delivers, a joinder to this Agreement, in form and substance reasonably satisfactory to the Corporate Taxpayer, agreeing to be bound by Section 7.12 and acknowledging specifically the terms of Section 7.6(b). For the avoidance of doubt, if a TRA Holder transfers Spark HoldCo Units but does not assign to the transferee of such Spark HoldCo Units the rights of such TRA Holder under this Agreement with respect to such transferred Spark HoldCo Units, such TRA Holder shall continue to be entitled to receive the Tax Benefit Payments, if any, due hereunder with respect to, including any Tax Benefit Payments arising in respect of a subsequent Exchange of, such Spark HoldCo Units.

(b) Notwithstanding the foregoing provisions of this Section 7.6, no transferee described in clause (i) of the first sentence of Section 7.6(a) shall have the right to enforce the provisions of Section 2.3, Section 4.2, or Section 6.2 of this Agreement, and no assignee described in clause (ii) of the first sentence of Section 7.6(a) shall have any rights under this Agreement except for the right to enforce its right to receive payments under this Agreement.

(c) No provision of this Agreement may be amended unless such amendment is approved in writing by each of the Corporate Taxpayer and Spark HoldCo and by TRA Holders

who would be entitled to receive at least two-thirds of the Early Termination Payments payable to all TRA Holders hereunder if the Corporate Taxpayer had exercised its right of early termination on the date of the most recent Exchange prior to such amendment (excluding, for purposes of this sentence, all payments made to any TRA Holder pursuant to this Agreement since the date of such most recent Exchange); provided, however, that no such amendment shall be effective if such amendment would have a disproportionate effect on the payments certain TRA Holders will or may receive under this Agreement unless all such disproportionately affected TRA Holders consent in writing to such amendment. No provision of this Agreement may be waived unless such waiver is in writing and signed by the party against whom the waiver is to be effective.

(d) Except as otherwise specifically provided herein, all of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. the Corporate Taxpayer shall cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporate Taxpayer, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporate Taxpayer would be required to perform if no such succession had taken place. Notwithstanding anything to the contrary herein, in the event a TRA Holder transfers his Spark HoldCo Units to a Permitted Transferee (as defined in the Spark HoldCo LLC Agreement), such TRA Holder shall have the right, on behalf of such transferee, to enforce the provisions of Section 2.3, Section 4.2 or Section 6.2 with respect to such transferred Spark HoldCo Units.

Section 7.7 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 7.8 Resolution of Disputes.

(a) Any and all disputes which are not governed by Section 7.9, including any ancillary claims of any party, arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of this Section 7.8 and Section 7.9) (each a “Dispute”) shall be governed by this Section 7.8. The parties hereto shall attempt in good faith to resolve all Disputes by negotiation. If a Dispute between the parties hereto cannot be resolved in such manner, such Dispute shall be finally settled by arbitration conducted by a single arbitrator in Texas in accordance with the then-existing Rules of Arbitration of the International Chamber of Commerce. If the parties to the Dispute fail to agree on the selection of an arbitrator within ten (10) calendar days of the receipt of the request for arbitration, the International Chamber of Commerce shall make the appointment. The arbitrator shall be a lawyer admitted to the practice of law in the State of Texas and shall conduct the proceedings in the English language. Performance under this Agreement shall continue if reasonably possible during any arbitration proceedings. In addition to monetary damages, the arbitrator shall be empowered to award equitable relief, including an injunction and specific performance of any obligation under this Agreement. The arbitrator is not empowered to award damages in excess of compensatory

damages, and each party hereby irrevocably waives any right to recover punitive, exemplary or similar damages with respect to any Dispute. The award shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accounting presented to the arbitral tribunal. Judgment upon any award may be entered and enforced in any court having jurisdiction over a party or any of its assets.

(b) Notwithstanding the provisions of Section 7.8(a), the Corporate Taxpayer may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling a party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this Section 7.8(b), Agent and each TRA Holder (i) expressly consents to the application of Section 7.8(c) to any such action or proceeding, (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate, and (iii) irrevocably appoints the Corporate Taxpayer as agent of such party for service of process in connection with any such action or proceeding and agrees that service of process upon such agent, who shall promptly advise such party in writing of any such service of process, shall be deemed in every respect effective service of process upon such party in any such action or proceeding.

(c) (i) EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF COURTS LOCATED IN HARRIS COUNTY, TEXAS, FOR THE PURPOSE OF ANY JUDICIAL PROCEEDING BROUGHT IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (B) OF THIS SECTION 7.8, OR ANY JUDICIAL PROCEEDING ANCILLARY TO AN ARBITRATION OR CONTEMPLATED ARBITRATION ARISING OUT OF OR RELATING TO OR CONCERNING THIS AGREEMENT. Such ancillary judicial proceedings include any suit, action or proceeding to compel arbitration, to obtain temporary or preliminary judicial relief in aid of arbitration, or to confirm an arbitration award. The parties acknowledge that the fora designated by this Section 7.8(c) have a reasonable relation to this Agreement, and to the parties' relationship with one another; and

(ii) The parties hereby waive, to the fullest extent permitted by applicable law, any objection which they now or hereafter may have to personal jurisdiction or to the laying of venue of any such ancillary suit, action or proceeding brought in any court referred to in Section 7.8(c)(i) and such parties agree not to plead or claim the same.

Section 7.9 Reconciliation. In the event that the Corporate Taxpayer and Agent or the relevant TRA Holder, as applicable, are unable to resolve a disagreement with respect to the matters governed by Section 2.3, Section 4.2 and Section 6.2 within the relevant period designated in this Agreement (“Reconciliation Dispute”), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert (the “Expert”) in the particular area of disagreement mutually acceptable to both parties. The Expert shall be a partner or principal in a nationally recognized accounting or law firm, and unless the Corporate Taxpayer and Agent or the relevant TRA Holder agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporate Taxpayer or Agent or the relevant TRA Holder, as applicable, or other actual or potential conflict of interest. If the parties

are unable to agree on an Expert within fifteen (15) calendar days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, the Expert shall be appointed by the International Chamber of Commerce Centre for Expertise. The Expert shall resolve any matter relating to the Exchange Basis Schedule or an amendment thereto or the Early Termination Schedule or an amendment thereto within thirty (30) calendar days and shall resolve any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen (15) calendar days or as soon thereafter as is reasonably practicable, in each case after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, the undisputed amount shall be paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporate Taxpayer, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by the Corporate Taxpayer except as provided in the next sentence. The Corporate Taxpayer and Agent or the relevant TRA Holder, as applicable, shall bear their own costs and expenses of such proceeding, unless (i) the Expert adopts Agent's or the relevant TRA Holder's, as applicable, position, in which case the Corporate Taxpayer shall reimburse Agent or the relevant TRA Holder, as applicable, for any reasonable out-of-pocket costs and expenses in such proceeding, or (ii) the Expert adopts the Corporate Taxpayer's position, in which case Agent or the relevant TRA Holder, as applicable, shall reimburse the Corporate Taxpayer for any reasonable out-of-pocket costs and expenses in such proceeding. Any dispute as to whether a dispute is a Reconciliation Dispute within the meaning of this Section 7.9 shall be decided by the Expert. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.9 shall be binding on the Corporate Taxpayer and its Subsidiaries and Agent or the relevant TRA Holder, as applicable, and may be entered and enforced in any court having jurisdiction.

Section 7.10 Withholding. The Corporate Taxpayer shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as the Corporate Taxpayer is required to deduct and withhold with respect to the making of such payment under the Code or any provision of U.S. federal, state, local or non-U.S. Tax law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by the Corporate Taxpayer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the relevant TRA Holder.

Section 7.11 Admission of the Corporate Taxpayer into a Consolidated Group; Transfers of Corporate Assets.

(a) If the Corporate Taxpayer becomes a member of an affiliated or consolidated group of corporations that files a consolidated income Tax Return pursuant to Sections 1501 *et seq.* of the Code or any corresponding provisions of U.S. state or local law, then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments and other applicable items hereunder shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If any entity that is obligated to make a Tax Benefit Payment or Early Termination Payment hereunder transfers one or more assets to a corporation (or a Person classified as a corporation for U.S. federal income Tax purposes) with which such entity does not file a consolidated Tax Return pursuant to Section 1501 of the Code, such entity, for purposes of calculating the amount of any Tax Benefit Payment or Early Termination Payment (e.g., calculating the gross income of the entity and determining the Realized Tax Benefit of such entity) due hereunder, shall be treated as having disposed of such asset in a fully taxable transaction on the date of such contribution. The consideration deemed to be received by such entity shall be equal to the fair market value of the contributed asset, plus (i) the amount of debt to which such asset is subject, in the case of a contribution of an encumbered asset or (ii) the amount of debt allocated to such asset, in the case of a contribution of a partnership interest. For purposes of this Section 7.11(b), a transfer of a partnership interest shall be treated as a transfer of the transferring partner's share of each of the assets and liabilities of that partnership.

Section 7.12 Confidentiality.

(a) Agent and each of its assignees and each TRA Holder and each of its assignees acknowledges and agrees that the information of the Corporate Taxpayer is confidential and, except in the course of performing any duties as necessary for the Corporate Taxpayer and its Affiliates, as required by law or legal process or to enforce the terms of this Agreement, such person shall keep and retain in the strictest confidence and not disclose to any Person any confidential matters, acquired pursuant to this Agreement, of the Corporate Taxpayer and its Affiliates and successors, concerning Spark HoldCo and its Affiliates and successors or the TRA Holders, learned by Agent or TRA Holder heretofore or hereafter. This Section 7.12 shall not apply to (i) any information that has been made publicly available by the Corporate Taxpayer or any of its Affiliates, becomes public knowledge (except as a result of an act of Agent or a TRA Holder in violation of this Agreement) or is generally known to the business community and (ii) the disclosure of information to the extent necessary for a TRA Holder to prepare and file its Tax Returns, to respond to any inquiries regarding the same from any Taxing Authority or to prosecute or defend any action, proceeding or audit by any Taxing Authority with respect to such returns. Notwithstanding anything to the contrary herein, Agent and each of its assignees (and each employee, representative or other agent of Agent or its assignees, as applicable) and each TRA Holder and each of its assignees (and each employee, representative or other agent of such TRA Holder or its assignees, as applicable) may disclose to any and all Persons, without limitation of any kind, the Tax treatment and Tax structure of the Corporate Taxpayer, Spark HoldCo, Agent, the TRA Holders and their Affiliates, and any of their transactions, and all materials of any kind (including opinions or other Tax analyses) that are provided to Agent or the TRA Holder relating to such Tax treatment and Tax structure.

(b) If Agent or an assignee or a TRA Holder or an assignee commits a breach, or threatens to commit a breach, of any of the provisions of this Section 7.12, the Corporate Taxpayer shall have the right and remedy to have the provisions of this Section 7.12 specifically enforced by injunctive relief or otherwise by any court of competent jurisdiction without the need to post any bond or other security, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Corporate Taxpayer or any of its Subsidiaries or the TRA Holders and the accounts and funds managed by the Corporate

Taxpayer and that money damages alone shall not provide an adequate remedy to such Persons. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

IN WITNESS WHEREOF, the Corporate Taxpayer, Spark HoldCo, the Members, and Agent have duly executed this Agreement as of the date first written above.

CORPORATE TAXPAYER:

SPARK ENERGY, INC.

By: /s/ Nathan Kroeker

Name: Nathan Kroeker

Title: President and Chief Executive Officer

SPARK HOLDCO:

SPARK HOLDCO, LLC

By: /s/ Nathan Kroeker

Name: Nathan Kroeker

Title: President and Chief Executive Officer

AGENT:

/s/ W. Keith Maxwell III

Name: W. Keith Maxwell III

[The signatures of the Members are attached in Schedule A.]

SCHEDULE A

THE MEMBERS OF SPARK HOLDCO, LLC PARTY TO TAX RECEIVABLE AGREEMENT

Member

Signature

NuDevco Retail Holdings, LLC

NUDEVCO RETAIL HOLDINGS, LLC

By: /s/ Gil Melman

Name: Gil Melman

Title: Vice President and General Counsel

NuDevco Retail, LLC

NUDEVCO RETAIL, LLC

By: /s/ Gil Melman

Name: Gil Melman

Title: Vice President and General Counsel

SCHEDULE B

ILLUSTRATION OF TRA COVERAGE RATIO AND DEFERRAL CALCULATIONS

(dollar amounts in millions)

Assumptions for Purposes of Illustrative Calculations:	
Corporate Taxpayer Interest in Spark HoldCo	21.82%
Target Distribution	\$ 4.4
Grossed-Up Target Distribution	\$ 20.0
Assumed Tax Liability of Corporate Taxpayer	\$ 2.2
Grossed-Up Tax Distribution	\$ 10.0
Expected Tax Benefit Payment Due	\$ 1.1
Grossed-Up TRA-Related Distribution (Pre-Deferral Calculation)	\$ 5.0
Minimum TRA Coverage Ratio	130%

	Scenarios:		
	(A) No Deferral of	(B) Deferral of	(C) Partial
	TRA Payment	Entire TRA Payment	Deferral TRA Payment
Calculation of TRA Coverage Ratio			
Hypothetical Cash Available for Distribution	\$ 50.0	\$ 32.5	\$ 42.5
Total Distributions (Pre-Deferral)			
(i) Grossed-Up Target Distribution	\$ 20.0	\$ 20.0	\$ 20.0
(ii) Grossed-Up Tax Distribution	\$ 10.0	\$ 10.0	\$ 10.0
(iii) Grossed-Up TRA-Related Distribution (Pre-Deferral Calculation)	\$ 5.0	\$ 5.0	\$ 5.0
Total Distributions (Pre-Deferral)	\$ 35.0	\$ 35.0	\$ 35.0
TRA Coverage Ratio (Pre-Deferral)	143%	93%	121%
Deferral of TRA-Related Distribution	\$ —	\$ 5.0	\$ 2.3
Total Distributions (Post-Deferral)			
(i) Grossed-Up Target Distribution	\$ 20.0	\$ 20.0	\$ 20.0
(ii) Grossed-Up Tax Distribution	\$ 10.0	\$ 10.0	\$ 10.0
(iii) Grossed-Up TRA-Related Distribution (Post-Deferral Calculation)	\$ 5.0	\$ —	\$ 2.7
Total Distributions (Post-Deferral)	\$ 35.0	\$ 30.0	\$ 32.7
TRA Coverage Ratio (Post-Deferral)	143%	108%	130%
Calculation of Deferred TRA Amount			
Deferral of TRA-Related Distribution	\$ —	\$ 5.0	\$ 2.3
Corporate Taxpayer Interest in Spark HoldCo	21.82%	21.82%	21.82%
Addition to Deferred TRA Amount	\$ —	\$ 1.10	\$ 0.51
Amount of Tax Benefit Payment Due Currently	\$ 1.10	\$ —	\$ 0.59

**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

OF

SPARK HOLDCO, LLC

DATED AS OF AUGUST 1, 2014

THE LIMITED LIABILITY COMPANY INTERESTS IN SPARK HOLDCO, LLC HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED, THE SECURITIES LAWS OF ANY STATE, OR ANY OTHER APPLICABLE SECURITIES LAWS, AND ARE BEING SOLD IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. SUCH INTERESTS MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT, ANY APPLICABLE SECURITIES LAWS OF ANY STATE AND ANY OTHER APPLICABLE SECURITIES LAWS; (II) THE TERMS AND CONDITIONS OF THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT; AND (III) ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BETWEEN THE MANAGING MEMBER AND THE APPLICABLE MEMBER. THE LIMITED LIABILITY COMPANY INTERESTS MAY NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS, THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT, AND ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BY THE MANAGING MEMBER AND THE APPLICABLE MEMBER. THEREFORE, PURCHASERS AND OTHER TRANSFEREES OF SUCH LIMITED LIABILITY COMPANY INTERESTS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT OR ACQUISITION FOR AN INDEFINITE PERIOD OF TIME.

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**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

**OF
SPARK HOLDCO, LLC**

This SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (as amended, supplemented or restated from time to time, this “*Agreement*”) is entered into as of August 1, 2014, by and among SPARK HOLDCO, LLC, a Delaware limited liability company (the “*Company*”), and each other Person who is or at any time becomes a Member in accordance with the terms of this Agreement and the Act. Capitalized terms used herein and not otherwise defined have the respective meanings set forth in Section 1.1.

RECITALS

WHEREAS, the Company was formed pursuant to a Certificate of Formation filed in the office of the Secretary of State of the State of Delaware on April 22, 2014;

WHEREAS, in connection with the execution and delivery of the Transaction Agreement, dated as of June 18, 2014, by and among the Company, Spark Energy Ventures, LLC, a Texas limited liability company (“*SEV*”), Spark Energy, Inc., a Delaware corporation (“*SEI*”), Spark Energy Holdings, LLC, Texas limited liability company, NuDevo Retail, LLC, a Delaware limited liability company (“*NuDevco Retail*”) and NuDevco Retail Holdings, LLC, a Texas limited liability company (“*NuDevco Retail Holdings*”) and the consummation of the transactions contemplated thereby, NuDevco Retail, NuDevco Retail Holdings and SEI entered into the Amended and Restated Limited Liability Company Agreement of the Company, dated as of June 18, 2014 (the “*Existing LLC Agreement*”), pursuant to which SEI was admitted as the sole managing member of the Company (in its capacity as managing Member as well as in any other capacity, the “*Managing Member*”);

WHEREAS, SEI has entered into an underwriting agreement with the several underwriters named therein, providing for the initial public offering (the “*IPO*”) of up to 3,000,000 shares of Class A Stock (plus up to an additional 450,000 shares pursuant to an option granted to the underwriters named therein);

WHEREAS, it is contemplated that pursuant to the Transaction Agreement II, dated as of July 30, 2014, by and among the Company, SEI, NuDevco Retail, NuDevco Retail Holdings, SEV, NuDevco Partners Holdings, LLC, a Texas limited liability company and Associated Energy Services, LP, a Texas limited partnership, the parties to that agreement will effect various transactions in connection with the IPO (the “*IPO Transactions*”);

WHEREAS, the Members of the Company consist of those Persons listed on Exhibit A as of the date hereof;

WHEREAS, the Members of the Company desire to amend and restate the Existing LLC Agreement to reflect the IPO Transactions and to provide for, among other things, the exchange rights set forth in Section 3.7; and

WHEREAS, this Agreement shall supersede the Existing LLC Agreement in its entirety as of the date hereof;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Definitions**. (a) As used in this Agreement and the Schedules and Exhibits attached to this Agreement, the following definitions shall apply:

“**Act**” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time (or any corresponding provisions of succeeding law).

“**Action**” means any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Entity.

“**Adjusted Basis**” has the meaning given such term in Section 1011 of the Code.

“**Adjusted Capital Account Deficit**” means the deficit balance, if any, in such Member’s Capital Account at the end of any Fiscal Year, with the following adjustments:

(a) credit to such Capital Account any amount that such Member is obligated to restore under Treasury Regulations Section 1.704-1(b)(2)(ii)(c), as well as any addition thereto pursuant to the next to last sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) after taking into account thereunder any changes during such year in Company Minimum Gain and in the minimum gain attributable to any Member Nonrecourse Debt; and

(b) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. For these purposes, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; provided that, for purposes of this Agreement, (i) no Member shall be deemed an Affiliate of the Company or any of its Subsidiaries and (ii) none of the Company or any of its Subsidiaries shall be deemed an Affiliate of any Member.

“**Agreement**” is defined in the preamble.

“**Assumed Tax Liability**” means, with respect to any taxable year, an amount equal to (a) the cumulative amount of federal, state and local income taxes (including any applicable estimated taxes), determined taking into account the character of income and loss allocated as it affects the applicable tax rate, due from SEI in all prior taxable years and that the Managing Member estimates as of such Tax Distribution Date would be due from SEI in such taxable year, (i) assuming SEI earned solely the items of income, gain, deduction, loss, and/or credit allocated to it pursuant to Article IV, (ii) after taking proper account of loss carryforwards available to SEI resulting from losses allocated to SEI by the Company, to the extent not taken into account in prior periods, minus (b) prior distributions made pursuant to Section 5.2(a). For purposes of determining the Assumed Tax Liability of SEI, adjustments by reason of Sections 734(b) or 743(b) of the Code shall be taken into account.

“**beneficially own**” and “**beneficial owner**” shall be as defined in Rule 13d-3 of the rules promulgated under the Exchange Act.

“**Business Day**” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of Houston, Texas.

“ **Call Election Notice** ” is defined in Section 3.7(g)(ii).

“ **Call Right** ” has the meaning set forth in Section 3.7(g)(i).

“ **Capital Account** ” means, with respect to any Member, the Capital Account maintained for such Member in accordance with Section 3.4.

“ **Capital Contributions** ” means, with respect to any Member, the amount of cash and the initial Gross Asset Value of any property (other than cash) contributed to the Company by such Member. Any reference to the Capital Contributions of a Member will include the Capital Contributions made by a predecessor holder of such Member’s Units to the extent the Capital Contribution was made in respect of Units Transferred to such Member.

“ **Cash Election** ” is defined in Section 3.7(a)(ii).

“ **Cash Election Amount** ” means with respect to a particular Exchange, an amount of cash equal to the value of the shares of Class A Stock that would be received in such Exchange as of the date of receipt by the Company of the Exchange Notice with respect to such Exchange pursuant to Section 3.7 (the “ **Valuation Date** ”), decreased by any distributions received by the Exchanging Member with respect to the Units that are the subject of the Exchange following the date of receipt by the Company of the Exchange Notice where the record date for such distribution was after the date of receipt of such notice. For this purpose, the value of a share of Class A Stock shall equal (i) if shares of Class A Stock are then admitted to trading on a National Securities Exchange, the volume weighted average price on such exchange of a share of Class A Stock for the 30 trading days ending on the trading day prior to the Valuation Date or (ii) in the event shares of Class A Stock are not then admitted to trading on a National Securities Exchange, the value, as reasonably determined by the Managing Member in good faith, that would be obtained in an arm’s length transaction for cash between an informed and willing buyer and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, and without regard to the particular circumstances of the buyer or seller.

“ **Class A Stock** ” shall, as applicable, (i) mean the Class A Common Stock, par value \$0.01 per share, of SEI or (ii) following any consolidation, merger, reclassification or other similar event involving SEI, mean any shares or other securities of SEI or any other Person or cash or other property that become payable in consideration for the Class A Stock or into which the Class A Stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“ **Class B Stock** ” shall, as applicable, (i) mean the Class B Common Stock, par value \$0.01 per share, of SEI or (ii) following any consolidation, merger, reclassification or other similar event involving SEI, mean any shares or other securities of SEI or any other Person or cash or other property that become payable in consideration for the Class B Stock or into which the Class B Stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“ **Code** ” means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

“ **Commission** ” means the U.S. Securities and Exchange Commission.

“ **Company** ” is defined in the preamble to this Agreement.

“ **Company Minimum Gain** ” has the meaning of “partnership minimum gain” set forth in Treasury Regulations Sections 1.704-2(b)(2) and -2(d). It is further understood that Company Minimum Gain shall be determined in a manner consistent with the rules of Treasury Regulations Section 1.702-2(b)(2), including the requirement that if the adjusted Gross Asset Value of property subject to one or more Nonrecourse Liabilities differs from its adjusted tax basis, Company Minimum Gain shall be determined with reference to such Gross Asset Value.

“ **Contract** ” means any written agreement, contract, lease, sublease, license, sublicense, obligation, promise or undertaking.

“**control**” (including the terms “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

“**Depreciation**” means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that (a) with respect to any such property the Gross Asset Value of which differs from its Adjusted Basis for federal income tax purposes and which difference is being eliminated by use of the “remedial method” pursuant to Treasury Regulations Section 1.704-3(d), Depreciation for such Fiscal Year shall be the amount of book basis recovered for such Fiscal Year under the rules prescribed by Treasury Regulations Section 1.704-3(d)(2), and (b) with respect to any other such property the Gross Asset Value of which differs from its Adjusted Basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning Adjusted Basis; *provided, however*, that if the Adjusted Basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation with respect to such asset shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Tax Matters Member.

“**DGCL**” means the General Corporation Law of the State of Delaware, as amended from time to time (or any corresponding provisions of succeeding law).

“**Equity Securities**” means (a) with respect to a partnership, limited liability company or similar Person, any and all units, interests, rights to purchase, warrants, options or other equivalents of, or other ownership interests in, any such Person as well as debt or equity instruments convertible, exchangeable or exercisable into any such units, interests, rights or other ownership interests and (b) with respect to a corporation, any and all shares, interests, participation or other equivalents (however designated) of corporate stock, including all common stock and preferred stock, or warrants, options or other rights to acquire any of the foregoing, including any debt instrument convertible or exchangeable into any of the foregoing.

“**Exchange**” has the meaning set forth in Section 3.7(a).

“**Exchange Act**” means the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, as the same may be amended from time to time (or any corresponding provisions of succeeding law).

“**Exchange Date**” is defined in Section 3.7(c).

“**Exchange Notice**” is defined in Section 3.7(b).

“**Exchanging Member**” is defined in Section 3.7(b).

“**Existing LLC Agreement**” is defined in the recitals to this Agreement.

“**Fair Market Value**” means the fair market value of any property as determined in good faith by the Managing Member after taking into account such factors as the Managing Member shall deem appropriate.

“**Fiscal Year**” means the fiscal year of the Company, which shall end on December 31 of each calendar year unless, for federal income tax purposes, another fiscal year is required. The Company shall have the same fiscal year for federal income tax purposes and for accounting purposes.

“**GAAP**” means generally acceptable accounting principles at the time.

“**Good Faith**” means a Person having acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to a criminal proceeding, having had no reasonable cause to believe such Person’s conduct was unlawful.

“ **Governmental Entity** ” means any federal, national, supranational, state, provincial, local, foreign or other government, governmental, stock exchange, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

“ **Gross Asset Value** ” means, with respect to any asset, the asset’s Adjusted Basis for federal income tax purposes, except as follows:

(a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset as of the date of such contribution;

(b) the Gross Asset Values of all Company assets shall be adjusted to equal their respective gross Fair Market Values as of the following times: (i) the acquisition of an interest (or additional interest) in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution to the Company or in exchange for the performance of more than a *de minimis* amount of services to or for the benefit of the Company; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for an interest in the Company; (iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)(1) (other than pursuant to Code Section 708(b)(1)(B)); (iv) the acquisition of an interest in the Company by any new or existing Member upon the exercise of a noncompensatory option in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(s); or (v) any other event to the extent determined by the Managing Member to be permitted and necessary to properly reflect Gross Asset Values in accordance with the standards set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(q); *provided*, however, that adjustments pursuant to clauses (i), (ii) and (iv) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company. If any noncompensatory options are outstanding upon the occurrence of an event described in this paragraph (b)(i) through (b)(v), the Company shall adjust the Gross Asset Values of its properties in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f)(1) and 1.704-1(b)(2)(iv)(h)(2);

(c) the Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross Fair Market Value of such asset on the date of such distribution;

(d) the Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subsection (f) in the definition of “Profits” or “Losses” below or Section 4.2(g); *provided*, however, that the Gross Asset Value of a Company asset shall not be adjusted pursuant to this subsection to the extent the Managing Member determines that an adjustment pursuant to subsection (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d); and

(e) if the Gross Asset Value of a Company asset has been determined or adjusted pursuant to subsections (a), (b) or (d) of this definition of Gross Asset Value, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits, Losses and other items allocated pursuant to Article IV.

“ **Indebtedness** ” means (a) all indebtedness for borrowed money (including capitalized lease obligations, sale-leaseback transactions or other similar transactions, however evidenced), (b) any other indebtedness that is evidenced by a note, bond, debenture, draft or similar instrument, (c) notes payable and (d) lines of credit and any other agreements relating to the borrowing of money or extension of credit.

“ **Interest** ” means the entire interest of a Member in the Company, including the Units and all of such Member’s rights, powers and privileges under this Agreement and the Act.

“ **IPO** ” is defined in the recitals to this Agreement.

“ ***IPO Date Capital Account Balance*** ” means, with respect to any Member, the positive Capital Account balance of such Member as of the date hereof, the amount or deemed value of which is set forth on Exhibit A.

“ ***IPO Transactions*** ” is defined in the recitals to this Agreement.

“ ***Law*** ” means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

“ ***Legal Action*** ” is defined in Section 11.7.

“ ***Liability*** ” means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

“ ***Liquidating Events*** ” is defined in Section 10.1.

“ ***Loss*** ” means any and all losses, damages, claims, costs and expenses, interest, awards, judgments and penalties (including reasonable attorneys’ fees and expenses, but excluding any allocation of corporate overhead, internal legal department costs and other internal costs and expenses).

“ ***Managing Member*** ” is defined in the recitals to this Agreement.

“ ***Member*** ” means any Person that executes this Agreement as a Member, and any other Person admitted to the Company as an additional or substituted Member, that has not made a disposition of such Person’s entire Interest.

“ ***Member Minimum Gain*** ” has the meaning ascribed to “partner nonrecourse debt minimum gain” set forth in Treasury Regulations Section 1.704-2(i). It is further understood that the determination of Member Minimum Gain and the net increase or decrease in Member Minimum Gain shall be made in the same manner as required for such determination of Company Minimum Gain under Treasury Regulations Sections 1.704-2(d) and -2(g)(3).

“ ***Member Nonrecourse Debt*** ” has the meaning of “partner nonrecourse debt” set forth in Treasury Regulations Section 1.704-2(b)(4).

“ ***Member Nonrecourse Deductions*** ” has the meaning of “partner nonrecourse deductions” set forth in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

“ ***National Securities Exchange*** ” means an exchange registered with the Commission under the Exchange Act.

“ ***Nonrecourse Deductions*** ” has the meaning assigned that term in Treasury Regulations Section 1.704-2(b).

“ ***Nonrecourse Liability*** ” is defined in Treasury Regulations Section 1.704-2(b)(3).

“ ***NuDevco Retail*** ” is defined in the recitals to this Agreement.

“ ***NuDevco Retail Holdings*** ” is defined in the recitals to this Agreement.

“ ***Officer*** ” means each Person designated as an officer of the Company pursuant to and in accordance with the provisions of Section 6.2, subject to any resolution of the Managing Member appointing such Person as an officer or relating to such appointment.

“ ***Permitted Transferee*** ” means, with respect to any Member, (a) any Affiliate of such Member; (b) any successor entity of such Member; (c) a trust established by or for the benefit of a Member of which only such Member and his or her immediate family members are beneficiaries; (d) any Person established for the benefit of, and beneficially owned solely by, an entity Member or the sole individual direct or indirect owner of an entity Member; and (d) upon an individual Member’s death, an executor, administrator or beneficiary of the estate of the deceased Member.

“ **Person** ” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“ **Plan Asset Regulations** ” means the regulations issued by the U.S. Department of Labor at Section 2510.3-101 of Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations, or any successor regulations as the same may be amended from time to time.

“ **President and Chief Executive Officer** ” is defined in Section 6.2(b).

“ **Prime Rate** ” means, on any date of determination, a rate per annum equal to the rate of interest most recently published by The Wall Street Journal as the “prime rate” at large U.S. money center banks.

“ **Proceeding** ” is defined in Section 6.4.

“ **Profits** ” or “ **Losses** ” means, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) any income or gain of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*i*), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss;

(c) in the event the Gross Asset Value of any Company asset is adjusted pursuant to subsection (b) or (c) of the definition of Gross Asset Value above, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the Company asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the Company asset) from the disposition of such asset and shall, except to the extent allocated pursuant to Section 4.2, be taken into account for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(e) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation;

(f) to the extent an adjustment to the adjusted tax basis of any asset pursuant to Code Section 734(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(*m*)(4), to be taken into account in determining Capital Account balances as a result of a distribution other than in liquidation of a Member’s interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or an item of loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) any items of income, gain, loss or deduction which are specifically allocated pursuant to the provisions of Section 4.2 shall not be taken into account in computing Profits or Losses for any taxable year, but such items available to be specially allocated pursuant to Section 4.2 will be determined by applying rules analogous to those set forth in subparagraphs (a) through (f) above.

“ **Property** ” means all real and personal property owned by the Company from time to time, including both tangible and intangible property.

“ **SEI** ” is defined in the recitals to this Agreement.

“ **SEI Common Stock** ” means all classes and series of common stock of SEI, including the Class A Stock and Class B Stock.

“ **SEI Offer** ” is defined in Section 3.7(h).

“ **Quarterly Distribution Date** ” means the date on which SEI pays a dividend to the holders of its Class A Stock.

“ **Reclassification Event** ” means any of the following: (i) any reclassification or recapitalization of SEI Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination or any transaction subject to Section 3.1(g)), (ii) any merger, consolidation or other combination involving the Managing Member, or (iii) any sale, conveyance, lease, or other disposal of all or substantially all the properties and assets of the Managing Member to any other Person, in each of clauses (i), (ii) or (iii), as a result of which holders of SEI Common Stock shall be entitled to receive cash, securities or other property for their shares of SEI Common Stock.

“ **Regulatory Allocations** ” is defined in Section 4.2(h).

“ **Revocation Notice** ” is defined in Section 3.7(g)(ii).

“ **Securities Act** ” means the Securities Act of 1933, and the rules and regulations promulgated thereunder, as the same may be amended from time to time (or any corresponding provisions of succeeding law).

“ **Subsidiary** ” means, with respect to any specified Person, any other Person with respect to which such specified Person (a) has, directly or indirectly, the power, through the ownership of securities or otherwise, to elect a majority of directors or similar managing body or (b) beneficially owns, directly or indirectly, a majority of such Person’s Equity Securities.

“ **Target Distribution** ” is defined in the Tax Receivable Agreement.

“ **Tax Advance** ” has the meaning set forth in Section 5.2(d).

“ **Tax Distribution Date** ” means any date that is two Business Days prior to the date on which estimated federal income tax payments are required to be made by calendar year corporate taxpayers and the due date for federal income tax returns of corporate calendar year taxpayers (without regard to extensions).

“ **Tax Matters Member** ” means the “tax matters partner” as defined in Code Section 6231(a)(7) and as appointed in Section 9.4.

“ **Tax Receivable Agreement** ” means the Tax Receivable Agreement dated as of August 1, 2014, by and among the Company, SEI, NuDevco Retail, NuDevco Retail Holdings and W. Keith Maxwell III, as the same may be amended, supplemented or restated from time to time.

“ **Transfer** ” means, as a noun, any voluntary or involuntary, direct or indirect (whether through a change of control of the Transferor or any Person that controls the Transferor, the issuance or transfer of Equity Securities of the Transferor, by operation of law or otherwise), transfer, sale, pledge or hypothecation or other disposition and, as a verb, voluntarily or involuntarily, directly or indirectly (whether through a change of control of the Transferor or any Person that controls the Transferor, the issuance or transfer of Equity Securities of the Transferor or any Person that controls the Transferor, by operation of law or otherwise), to transfer, sell, pledge or hypothecate or otherwise dispose of. The terms “Transferee,” “Transferor,” “Transferred,” and other forms of the word “Transfer” shall have the correlative meanings.

“**TRA Payment Date**” means each “Payment Date,” as defined in the Tax Receivable Agreement. For the avoidance of doubt, each TRA Payment Date shall be determined without taking into account any payment deferrals to which SEI is entitled under the terms of the Tax Receivable Agreement.

“**Transfer Agent**” is defined in Section 3.7(b).

“**Treasury Regulations**” means pronouncements, as amended from time to time, or their successor pronouncements, which clarify, interpret and apply the provisions of the Code, and which are designated as “Treasury Regulations” by the United States Department of the Treasury.

“**Units**” means the Units issued hereunder and shall also include any equity security issued in respect of or in exchange for Units, whether by way of dividend or other distribution, split, recapitalization, merger, rollup transaction, consolidation, conversion or reorganization.

“**Valuation Date**” is defined in the definition of “Cash Election Amount.”

“**Winding-Up Member**” is defined in Section 10.3(a).

Section 1.2 **Interpretive Provisions**. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in Section 1.1 have the meanings assigned to them in Section 1.1 and are applicable to the singular as well as the plural forms of such terms;

(b) all accounting terms not otherwise defined herein have the meanings assigned under GAAP;

(c) all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars;

(d) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(e) whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”;

(f) “or” is not exclusive;

(g) pronouns of either gender or neuter shall include, as appropriate, the other pronoun forms; and

(h) the words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

ARTICLE II

ORGANIZATION OF THE LIMITED LIABILITY COMPANY

Section 2.1 **Formation**. The Company has been formed as a limited liability company subject to the provisions of the Act upon the terms, provisions and conditions set forth in this Agreement.

Section 2.2 **Filing**. The Company’s Certificate of Formation has been filed with the Secretary of State of the State of Delaware in accordance with the Act. The Members shall execute such further documents (including amendments to such Certificate of Formation) and take such further action as is appropriate to comply with the requirements of Law for the formation or operation of a limited liability company in Delaware and in all states and counties where the Company may conduct its business.

Section 2.3 **Name**. The name of the Company is “SPARK HOLDCO, LLC” and all business of the Company shall be conducted in such name or, in the discretion of the Managing Member, under any other name.

Section 2.4 **Registered Office; Registered Agent**. The location of the registered office of the Company in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, or at such other place as the Managing Member from time to time may select. The name and address for service of process on the Company in the State of Delaware are Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, or such other qualified Person as the Managing Member may designate from time to time and its business address.

Section 2.5 **Principal Place of Business**. The principal place of business of the Company shall be located in such place as is determined by the Managing Member from time to time.

Section 2.6 **Purpose; Powers**. The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Act. The Company shall have the power and authority to take any and all actions and engage in any and all activities necessary, appropriate, desirable, advisable, ancillary or incidental to the accomplishment of the foregoing purpose.

Section 2.7 **Term**. The term of the Company commenced on the date of filing of the Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware in accordance with the Act and shall continue indefinitely. The Company may be dissolved and its affairs wound up only in accordance with Article X.

Section 2.8 **Intent**. It is the intent of the Members that the Company be operated in a manner consistent with its treatment as a “partnership” for federal and state income tax purposes. It is also the intent of the Members that the Company not be operated or treated as a “partnership” for purposes of Section 303 of the Federal Bankruptcy Code. Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in this Section 2.8.

ARTICLE III

OWNERSHIP AND CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 3.1 **Authorized Units; General Provisions With Respect to Units**.

(a) Subject to the provisions of this Agreement, the Company shall be authorized to issue from time to time such number of Units and such other Equity Securities as the Managing Member shall determine in accordance with Section 3.3. Each authorized Unit may be issued pursuant to such agreements as the Managing Member shall approve, including pursuant to options and warrants. The Company may reissue any Units that have been repurchased or acquired by the Company.

(b) Each outstanding Unit shall be identical (except with respect to vesting and as provided in Section 3.3).

(c) Initially, none of the Units will be represented by certificates. If the Managing Member determines that it is in the interest of the Company to issue certificates representing the Units, certificates will be issued and the Units will be represented by those certificates, and this Agreement shall be amended as necessary or desirable to reflect the issuance of certificated Units for purposes of the Uniform Commercial Code. Nothing contained in this Section 3.1(c) shall be deemed to authorize or permit any Member to Transfer its Units except as otherwise permitted under this Agreement.

(d) The total number of Units issued and outstanding and held by the Members is set forth on Exhibit A (as amended from time to time in accordance with the terms of this Agreement) as of the date set forth therein.

(e) If at any time SEI issues a share of its Class A Stock (subsequent to the IPO) or any other Equity Security of SEI (other than shares of Class B Stock), (i) the Company shall issue to SEI one Unit (if SEI issues a share of Class A Stock), or such other Equity Security of the Company (if SEI issues Equity Securities other than Class A Stock) corresponding to the Equity Securities issued by SEI, and with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Securities of SEI and (ii) the net proceeds received by SEI with respect to the corresponding share of Class A Stock or other Equity Security, if any, shall be concurrently transferred to the Company; *provided, however*, that if SEI issues any shares of Class A Stock in order to purchase or fund the purchase from a Member of a number of Units (and shares of Class B Stock) equal to the number of shares of Class A Stock so issued, then the Company shall not issue any new Units in connection therewith and SEI shall not be required to transfer any net proceeds of such issuance to the Company (it being understood that any such net proceeds shall instead be transferred to the selling Member as consideration for such purchase). Notwithstanding the foregoing, this Section 3.1(e) shall not apply to the issuance and distribution to holders of shares of SEI Common Stock of rights to purchase Equity Securities of SEI under a “poison pill” or similar shareholders rights plan (it being understood that upon exchange of Units for Class A Stock, such Class A Stock will be issued together with a corresponding right), or to the issuance under SEI’s employee benefit plans of any warrants, options, other rights to acquire Equity Securities of SEI or rights or property that may be converted into or settled in Equity Securities of SEI, but shall in each of the foregoing cases apply to the issuance of Equity Securities of SEI in connection with the exercise or settlement of such rights, warrants, options or other rights or property. Except pursuant to Section 3.7, (x) the Company may not issue any additional Units to SEI or any of its Subsidiaries unless simultaneously SEI or such Subsidiary issues or sells an equal number of shares of SEI’s Class A Stock to another Person, and (y) the Company may not issue any other Equity Securities of the Company to SEI or any of its Subsidiaries unless simultaneously SEI or such Subsidiary issues or sells, to another Person, an equal number of shares of a new class or series of Equity Securities of SEI or such Subsidiary with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Securities of the Company.

(f) SEI or any of its Subsidiaries may not redeem, repurchase or otherwise acquire (i) any shares of Class A Stock (including upon forfeiture of any unvested shares of Class A Stock) unless simultaneously the Company redeems, repurchases or otherwise acquires from SEI an equal number of Units for the same price per security or (ii) any other Equity Securities of SEI unless simultaneously the Company redeems, repurchases or otherwise acquires from SEI an equal number of Equity Securities of the Company of a corresponding class or series with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Securities of SEI for the same price per security. Except pursuant to Section 3.7, the Company may not redeem, repurchase or otherwise acquire (A) any Units from SEI or any of its Subsidiaries unless simultaneously SEI or such Subsidiary redeems, repurchases or otherwise acquires an equal number of shares of Class A Stock for the same price per security from holders thereof, or (B) any other Equity Securities of the Company from SEI or any of its Subsidiaries unless simultaneously SEI or such Subsidiary redeems, repurchases or otherwise acquires for the same price per security an equal number of Equity Securities of SEI of a corresponding class or series with substantially the same rights to dividends and distributions (including distribution upon liquidation) and other economic rights as those of such Equity Securities of SEI. Notwithstanding the foregoing, to the extent that any consideration payable by SEI in connection with the redemption or repurchase of any shares of Class A Stock or other Equity Securities of SEI or any of its Subsidiaries consists (in whole or in part) of shares of Class A Stock or such other Equity Securities (including, for the avoidance of doubt, in connection with the cashless exercise of an option or warrant), then the redemption or repurchase of the corresponding Units or other Equity Securities of the Company shall be effectuated in an equivalent manner.

(g) The Company shall not in any manner effect any subdivision (by any stock split, stock dividend, reclassification, recapitalization or otherwise) or combination (by reverse stock split, reclassification, recapitalization or otherwise) of the outstanding Units unless accompanied by an identical subdivision or combination, as applicable, of the outstanding SEI Common Stock, with corresponding changes made with respect to any other exchangeable or convertible securities. SEI shall not in any manner effect any subdivision (by any stock split, stock dividend, reclassification, recapitalization or otherwise) or combination (by reverse stock split, reclassification, recapitalization or otherwise) of the outstanding SEI Common Stock unless accompanied by an identical subdivision or combination, as applicable, of the outstanding Units, with corresponding changes made with respect to any other exchangeable or convertible securities.

Section 3.2 **Voting Rights**. No Member has any voting right except with respect to those matters specifically reserved for a Member vote under the Act and for matters expressly requiring the approval of Members under this Agreement. Except as otherwise required by the Act, each Unit will entitle the holder thereof to one vote on all matters to be voted on by the Members. Except as otherwise expressly provided in this Agreement, the holders of Units having voting rights will vote together as a single class on all matters to be approved by the Members.

Section 3.3 **Capital Contributions; Unit Ownership**.

(a) *Capital Contributions*. Each Member named on Exhibit A shall be credited with the IPO Date Capital Account Balance set forth on Exhibit A in respect of its Interest specified thereon. No Member shall be required to make additional Capital Contributions.

(b) *Issuance of Additional Units or Interests*. Except as otherwise expressly provided in this Agreement, the Managing Member shall have the right to authorize and cause the Company to issue on such terms (including price) as may be determined by the Managing Member (i) subject to the limitations of Section 3.1, additional Units or other Equity Securities in the Company (including creating preferred interests or other classes or series of securities having such rights, preferences and privileges as determined by the Managing Member), and (ii) obligations, evidences of Indebtedness or other securities or interests convertible or exchangeable for Units or other Equity Securities in the Company; provided that, at any time following the date hereof, in each case the Company shall not issue Equity Securities in the Company to any Person unless such Person shall have executed a counterpart to this Agreement and all other documents, agreements or instruments deemed necessary or desirable in the discretion of the Managing Member. In that event, the Managing Member shall amend Exhibit A to reflect such additional issuances.

Section 3.4 **Capital Accounts**. A Capital Account shall be maintained for each Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and, to the extent consistent with such regulations, the other provisions of this Agreement. The Capital Account balance of each of the Members as of the date hereof is its respective IPO Date Capital Account Balance set forth on Exhibit A. Thereafter, each Member's Capital Account shall be (a) increased by (i) allocations to such Member of Profits pursuant to Section 4.1 and any other items of income or gain allocated to such Member pursuant to Section 4.2, (ii) the amount of additional cash or the initial Gross Asset Value of any asset (net of any Liabilities assumed by the Company and any Liabilities to which the asset is subject) contributed to the Company by such Member, and (iii) any other increases allowed or required by Treasury Regulations Section 1.704-1(b)(2)(iv), and (b) decreased by (i) allocations to such Member of Losses pursuant to Section 4.1 and any other items of deduction or loss allocated to such Member pursuant to the provisions of Section 4.2, (ii) the amount of any cash or the Gross Asset Value of any asset (net of any Liabilities assumed by the Company and any Liabilities to which the asset is subject) distributed to such Member, and (iii) any other decreases allowed or required by Treasury Regulations Section 1.704-1(b)(2)(iv). In the event of a Transfer of Units made in accordance with this Agreement, the Capital Account of the Transferor that is attributable to the Transferred Units shall carry over to the Transferee Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv)(I).

Section 3.5 **Reserved**.

Section 3.6 **Other Matters**.

(a) No Member shall demand or receive a return on or of its Capital Contributions or withdraw from the Company without the consent of the Managing Member. Under circumstances requiring a return of any Capital Contributions, no Member has the right to receive property other than cash.

(b) No Member shall receive any interest, salary, compensation, draw or reimbursement with respect to its Capital Contributions or its Capital Account, or for services rendered or expenses incurred on behalf of the Company or otherwise in its capacity as a Member, except as otherwise provided in or contemplated by this Agreement.

(c) The Liability of each Member shall be limited as set forth in the Act and other applicable Law and, except as expressly set forth in this Agreement or required by Law, no Member (or any of its Affiliates) shall be personally liable, whether to the Company, to any of the other Members, to the creditors of the Company, or to any other third party, for any debt or Liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Company.

(d) Except as otherwise required by the Act, a Member shall not be required to restore a deficit balance in its Capital Account, to lend any funds to the Company or to make any additional contributions or payments to the Company.

(e) The Company shall not be obligated for the repayment of any Capital Contributions of any Member.

Section 3.7 **Exchange of Units** .

(a) (i) Subject to adjustment as provided in Section 3.7(d) and subject to SEI's rights described in Section 3.7(g), each of the Members other than SEI shall be entitled to exchange with the Company, at any time and from time to time, any or all of such Member's Units (together with the same number of shares of Class B Stock) for an equivalent number of shares of Class A Stock (an "**Exchange**") or, at the Company's election made in accordance with Section 3.7(a)(ii), cash equal to the Cash Election Amount calculated with respect to such Exchange. Each Exchange shall be treated for federal income tax purposes as a sale of the Exchanging Member's Units (together with the same number of shares of Class B Stock) to SEI in exchange for shares of Class A Stock or cash, as applicable.

(ii) Upon receipt of an Exchange Notice, the Company shall be entitled to elect (a "**Cash Election**") to settle the Exchange by the delivery to the Exchanging Member, in lieu of the applicable number of shares of Class A Stock that would be received in such Exchange, an amount of cash equal to the Cash Election Amount for such Exchange. In order to make a Cash Election with respect to an Exchange, the Company must provide written notice of such election to the Exchanging Member prior to 1:00 pm, Houston time, on the third Business Day after the date on which the Exchange Notice shall have been received by the Company. If the Company fails to provide such written notice prior to such time, it shall not be entitled to make a Cash Election with respect to such Exchange.

(iii) Each Exchanging Member shall be permitted to effect an exchange of Units and shares of Class B Stock pursuant to this Section 3.7 that involves less than 1,000,000 Units no more frequently than on a quarterly basis; *provided, however*, that if an Exchanging Member provides an Exchange Notice with respect to all of the Units and shares of Class B Stock held by such Exchanging Member, such Exchange may occur at any time, subject to this Section 3.7.

(b) In order to exercise the exchange right under Section 3.7(a), the exchanging Member (the "**Exchanging Member**") shall provide written notice (the "**Exchange Notice**") to the Company and SEI, stating that the Exchanging Member elects to exchange with the Company a stated (and equal) number of Units and shares of Class B Stock represented, if applicable, by a certificate or certificates, to the extent specified in such notice, and if the shares of Class A Stock to be received are to be issued other than in the name of the Exchanging Member, specifying the name(s) of the Person(s) in whose name or on whose order the shares of Class A Stock are to be issued, and shall present and surrender the certificate or certificates representing such Units and shares of Class B Stock (in each case, if certificated) during normal business hours at the principal executive offices of the Company, or if any agent for the registration or transfer of Class A Stock is then duly appointed and acting (the "**Transfer Agent**"), at the office of the Transfer Agent with respect to such Class A Stock.

(c) If required by SEI, any certificate for Units and shares of Class B Stock (in each case, if certificated) surrendered for exchange with the Company shall be accompanied by instruments of transfer, in form reasonably satisfactory to SEI and the Transfer Agent (if then duly appointed and acting), duly executed by the Exchanging Member or the Exchanging Member's duly authorized representative. If the Company has not made a valid Cash Election, then as promptly as practicable after the receipt of the Exchange Notice and the surrender to the Company of the certificate or certificates, if any, representing such Units and shares of Class B Stock (but in any event by the Exchange Date, as defined below), SEI shall issue and contribute to the Company, and the Company shall deliver to the Exchanging Member, or on the Exchanging Member's written order, a certificate or certificates, if applicable, for the number of shares of Class A Stock issuable upon the Exchange, and the Company shall deliver such Units and shares of Class B Stock to SEI in exchange for no additional consideration. If the Company has made a valid Cash Election, then as promptly as practicable after the receipt of the Exchange Notice (but in no event more than three

Business Days after receipt of the Exchange Notice), upon surrender to the Company of the certificate or certificates, if any, representing such Units and shares of Class B Stock, the Company shall deliver to the Exchanging Member as directed by the Exchanging Member by wire transfer of immediately available funds the Cash Election Amount payable upon the Exchange, and the Company shall deliver such Units and shares of Class B Stock to SEI for no additional consideration. Each Exchange shall be deemed to have been effected on (i) (x) the Business Day after the date on which the Exchange Notice shall have been received by the Company, SEI or the Transfer Agent, as applicable (subject to receipt by the Company, SEI or the Transfer Agent, as applicable, within three Business Days thereafter of any required instruments of transfer as aforesaid) if the Company has not made a valid Cash Election with respect to such Exchange or (y) if the Company has made a valid Cash Election with respect to such Exchange, the first Business Day on which the Company has available funds to pay the Cash Election Amount (but in no event more than three Business Days after receipt of the Exchange Notice), or (ii) such later date specified in or pursuant to the Exchange Notice (such date identified in clause (i) or (ii), as applicable, the “**Exchange Date**”). If the Company has not made a valid Cash Election, and the Person or Persons in whose name or names any certificate or certificates for shares of Class A Stock (which certificates shall bear any legends as may be required in accordance with applicable Law) shall be issuable upon such Exchange as aforesaid shall be deemed to have become, on the Exchange Date, the holder or holders of record of the shares represented thereby. Notwithstanding anything herein to the contrary, unless the Company has made a valid Cash Election, any Exchanging Member may withdraw or amend an Exchange request, in whole or in part, prior to the effectiveness of the applicable Exchange, at any time prior to 5:00 p.m., Houston time, on the Business Day immediately preceding the Exchange Date (or any such later time as may be required by applicable law) by delivery of a written notice of withdrawal to the Company, SEI or the Transfer Agent, specifying (1) the certificate numbers of the withdrawn Units (if any) and shares of Class B Stock, (2) if any, the number of Units and shares of Class B Stock as to which the Exchange Notice remains in effect and (3) if the Exchanging Member so determines, a new Exchange Date or any other new or revised information permitted in an Exchange Notice. An Exchange Notice may specify that the Exchange is to be contingent (including as to timing) upon the consummation of a purchase by another Person (whether in a tender or exchange offer, an underwritten offering or otherwise) of the shares of Class A Stock into which the Units and shares of Class B Stock are exchangeable, or contingent (including as to timing) upon the closing of an announced merger, consolidation or other transaction or event in which the shares of Class A Stock would be exchanged or converted or become exchangeable for or convertible into cash or other securities or property, provided that the foregoing shall not apply to any Exchange with respect to which the Company has made a valid Cash Election.

(d) If (i) there is any reclassification, reorganization, recapitalization or other similar transaction pursuant to which the shares of Class A Stock are converted or changed into another security, securities or other property, or (ii) SEI shall, by dividend or otherwise, distribute to all holders of the shares of Class A Stock evidences of its indebtedness or assets, including securities (including shares of Class A Stock and any rights, options or warrants to all holders of the shares of Class A Stock to subscribe for or to purchase or to otherwise acquire shares of Class A Stock, or other securities or rights convertible into, exchangeable for or exercisable for shares of Class A Stock) but excluding any cash dividend or distribution as well as any such distribution of indebtedness or assets received by SEI from the Company in respect of the Units, then upon any subsequent Exchange, in addition to the shares of Class A Stock or the Cash Election Amount, as applicable, each Member shall be entitled to receive the amount of such security, securities or other property that such Member would have received if such Exchange had occurred immediately prior to the effective date of such reclassification, reorganization, recapitalization, other similar transaction dividend or other distribution, taking into account any adjustment as a result of any subdivision (by any split, distribution or dividend, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse split, reclassification, recapitalization or otherwise) of such security, securities or other property that occurs after the effective time of such reclassification, reorganization, recapitalization or other similar transaction. For the avoidance of doubt, if there is any reclassification, reorganization, recapitalization or other similar transaction in which the shares of Class A Stock are converted or changed into another security, securities or other property, or any dividend or distribution (other than an excluded dividend or distribution, as described above), this Section 3.7 shall continue to be applicable, mutatis mutandis, with respect to such security or other property. This Agreement shall apply to the Units held by the Members and their Permitted Transferees as of the date hereof, as well as any Units hereafter acquired by a Member and his or her or its Permitted Transferees.

(e) SEI shall at all times keep available, solely for the purpose of issuance upon an Exchange, such number of shares of Class A Stock that shall be issuable upon the Exchange of all such outstanding Units and shares of Class B Stock; provided, that nothing contained herein shall be construed to preclude SEI from satisfying its obligations with

respect of an Exchange by delivery of shares of Class A Stock that are held in the treasury of SEI. SEI covenants that all shares of Class A Stock that shall be issued upon an Exchange shall, upon issuance thereof, be validly issued, fully paid and non-assessable. In addition, for so long as the shares of Class A Stock are listed on a National Securities Exchange, SEI shall use its commercially reasonable efforts to cause all shares of Class A Stock issued upon an Exchange to be listed on such National Securities Exchange at the time of such issuance.

(f) The issuance of shares of Class A Stock upon an Exchange shall be made without charge to the Exchanging Member for any stamp or other similar tax in respect of such issuance; *provided*, however, that if any such shares are to be issued in a name other than that of the Exchanging Member, then the Person or Persons in whose name the shares are to be issued shall pay to SEI the amount of any tax that may be payable in respect of any transfer involved in such issuance or shall establish to the satisfaction of SEI that such tax has been paid or is not payable.

(g) (i) Notwithstanding anything to the contrary in this Section 3.7, but subject to Section 3.7(h), an Exchanging Member shall be deemed to have offered to sell its Units and shares of Class B Stock as described in the Exchange Notice to SEI, and SEI may, in its sole discretion, by means of delivery of Call Election Notices and/or Revocation Notices in accordance with, and subject to the terms of, this Section 3.7(g), elect to purchase directly and acquire such Units and shares of Class B Stock on the Exchange Date by paying to the Exchanging Member (or, on the Exchanging Member's written order, its designee) that number of shares of Class A Stock the Exchanging Member (or its designee) would otherwise receive pursuant to Section 3.7(a) or, at SEI's election, an amount of cash equal to the Cash Election Amount of such shares of Class A Stock (the "**Call Right**"), whereupon SEI shall acquire the Units and shares of Class B Stock offered for exchange by the Exchanging Member and shall be treated for all purposes of this Agreement as the owner of such Units and shares of Class B Stock. In the event SEI shall exercise the Call Right, each of the Exchanging Member, the Company and SEI, as the case may be, shall treat the transaction between the Company and the Exchanging Member for federal income tax purposes as a sale of the Exchanging Member's Units and shares of Class B Stock to SEI.

(ii) SEI may at any time in its sole discretion deliver written notice (a "**Call Election Notice**") to each other Member setting forth its election to exercise its Call Right as contemplated by Section 3.7(g) with respect to future Exchanges (without needing to provide further notice of its intention to exercise its Call Right). Subject to the remainder of this Section 3.7(g)(ii), a Call Election Notice will be effective until SEI amends its Call Election Notice with a superseding Call Election Notice or revokes such Call Election Notice by delivery of a written notice of revocation delivered to each other Member or, with respect to a particular Exchange, the Company exercises its Cash Election (a "**Revocation Notice**"). A Call Election Notice may be amended or revoked by SEI at any time; provided that any Exchange Notice delivered by a Member will not, without such Member's written consent, be affected by the subsequent delivery of a Revocation Notice or by an Exchange Notice that is not effective until after the Exchange Date. Following delivery of a Revocation Notice, SEI may deliver a new Call Election Notice pursuant to this Section 3.7(g). Any amendment of a Call Election Notice will not be effective until the Business Day after its delivery to each Member (other than SEI). Each Call Election Notice shall specify the date from which it shall be effective (which shall be no earlier than the Business Day after delivery).

(h) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization or similar transaction with respect to shares of Class A Stock (an "**SEI Offer**") is proposed by SEI or is proposed to SEI or its stockholders and approved by the board of directors of SEI or is otherwise effected or to be effected with the consent or approval of the board of directors of SEI, the Members (other than SEI) shall be permitted to participate in such SEI Offer by delivery of a contingent Exchange Notice in accordance with the last sentence of Section 3.7(c). In the case of an SEI Offer proposed by SEI, SEI will use its commercially reasonable efforts to take all such actions and do all such things as are necessary or desirable to enable and permit the Members to participate in such SEI Offer to the same extent or on an economically equivalent basis as the holders of shares of Members without discrimination; provided that, without limiting the generality of this sentence, SEI will use its commercially reasonable efforts to ensure that such Members may participate in each such SEI Offer without being required to exchange Units and shares of Class B Stock (or, if so required, to ensure that any such Exchange shall be effective only upon, and shall be conditional upon, the closing of such SEI Offer and only to the extent necessary to tender or deposit to SEI Offer in accordance with the last sentence of Section 3.7(c), or, as applicable, to the extent necessary to exchange the number of Units and shares of Class B Stock being repurchased). For the avoidance of doubt, in no event shall Members (other than SEI) be entitled to receive in such SEI Offer aggregate consideration for each Unit and corresponding share of Class B Stock that is greater than the consideration payable in respect of each share of Class A Stock in connection with an SEI Offer.

(i) No Exchange shall impair the right of the Exchanging Member to receive any distributions payable on the Units so exchanged in respect of a record date that occurs prior to the Exchange Date for such Exchange. For the avoidance of doubt, no Exchanging Member, or a Person designated by an Exchanging Member to receive shares of Class A Stock, shall be entitled to receive, with respect to the same fiscal quarter, distributions or dividends both on Units exchanged by such Exchanging Member and on shares of Class A Stock received by such Exchanging Member, or other Person so designated, if applicable, in such Exchange.

ARTICLE IV

ALLOCATIONS OF PROFITS AND LOSSES

Section 4.1 **Profits and Losses**. After giving effect to the allocations under Section 4.2, Profits and Losses (and, to the extent determined by the Managing Member to be necessary and appropriate to achieve the resulting Capital Account balances described below, any allocable items of income, gain, loss, deduction or credit includable in the computation of Profits and Losses) for each Fiscal Year shall be allocated among the Members during such Fiscal Year in a manner such that, after giving effect to the special allocations set forth in Sections 4.2 and all distributions through the end of such Fiscal Year, the Capital Account balance of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the amount such Member would receive pursuant to Section 10.3(b) if all assets of the Company on hand at the end of such Fiscal Year were sold for cash equal to their Gross Asset Values, all liabilities of the Company were satisfied in cash in accordance with their terms (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), and all remaining or resulting cash was distributed, in accordance with Section 10.3(b), to the Members immediately after making such allocation, minus (ii) such Member's share of Company Minimum Gain and Member Minimum Gain, computed immediately prior to the hypothetical sale of assets.

Section 4.2 **Special Allocations**.

(a) Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in the manner excess nonrecourse liabilities of the Company are allocated pursuant to Section 4.4(c). The amount of Nonrecourse Deductions for a Fiscal Year shall equal the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that Fiscal Year over the aggregate amount of any distributions during that Fiscal Year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined in accordance with the provisions of Treasury Regulations Section 1.704-2(d).

(b) Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i). If more than one Member bears the economic risk of loss for such Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable to such Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the economic risk of loss. This Section 4.2(b) is intended to comply with the provisions of Treasury Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(c) Notwithstanding any other provision of this Agreement to the contrary, if there is a net decrease in Company Minimum Gain during any Fiscal Year (or if there was a net decrease in Company Minimum Gain for a prior Fiscal Year and the Company did not have sufficient amounts of income and gain during prior periods to allocate among the Members under this Section 4.2(c)), each Member shall be specially allocated items of Company income and gain for such Fiscal Year in an amount equal to such Member's share of the net decrease in Company Minimum Gain during such year (as determined pursuant to Treasury Regulations Section 1.704-2(g)(2)). This section is intended to constitute a minimum gain chargeback under Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(d) Notwithstanding any other provision of this Agreement except Section 4.2(c), if there is a net decrease in Member Minimum Gain during any Fiscal Year (or if there was a net decrease in Member Minimum Gain for a prior

Fiscal Year and the Company did not have sufficient amounts of income and gain during prior periods to allocate among the Members under this Section 4.2(d), each Member shall be specially allocated items of Company income and gain for such year in an amount equal to such Member's share of the net decrease in Member Minimum Gain (as determined pursuant to Treasury Regulations Section 1.704-2(i)(4)). This section is intended to constitute a partner nonrecourse debt minimum gain chargeback under Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) Notwithstanding any provision hereof to the contrary except Section 4.2(c) and Section 4.2(d), in the event any Member unexpectedly receives any adjustment, allocation or distribution described in paragraph (4), (5) or (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d), items of income and gain (consisting of a *pro rata* portion of each item of income, including gross income, and gain for the Fiscal Year) shall be specially allocated to such Member in an amount and manner sufficient to eliminate any Adjusted Capital Account Deficit of that Member as quickly as possible; provided that an allocation pursuant to this Section 4.2(e) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IV have been tentatively made as if this Section 4.2(e) were not in this Agreement. This Section 4.2(e) is intended to constitute a qualified income offset under Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

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

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution to any Member in complete liquidation of such Member's Interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such item of gain or loss shall be allocated to the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) if such section applies or to the Member to whom such distribution was made if Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) For the proper administration of the Company, the Managing Member may (i) adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions; (ii) make special allocations of income, gain, loss, deduction, Unrealized Gain or Unrealized Loss; and (iii) amend the provisions of this Agreement as appropriate (x) to reflect the proposal or promulgation of Treasury Regulations under Section 704(b) or Section 704(c) of the Code. The General Partner may adopt such conventions, make such allocations and make such amendments to this Agreement as provided in this Section 4.4(h) only if such conventions, allocations or amendments would not have a material adverse effect on any holder of Units.

(i) The allocations set forth in Sections 4.2(a) through 4.2(g) (the "**Regulatory Allocations**") are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provision of this Article IV (other than the Regulatory Allocations), the Regulatory Allocations (and anticipated future Regulatory Allocations) shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocation of other items and the Regulatory Allocations to each Member should be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. This Section 4.2(h) is intended to minimize to the extent possible and to the extent necessary any economic distortions which may result from application of the Regulatory Allocations and shall be interpreted in a manner consistent therewith.

Section 4.3 Allocations for Tax Purposes in General.

(a) Except as otherwise provided in this Section 4.3, each item of income, gain, loss and deduction of the Company for federal income tax purposes shall be allocated among the Members in the same manner as such item is allocated under Sections 4.1 and 4.2.

(b) In accordance with Code Section 704(c) and the Treasury Regulations thereunder (including the Treasury Regulations applying the principles of Code Section 704(c) to changes in Gross Asset Values), items of income, gain, loss and deduction with respect to any Company property having a Gross Asset Value that differs from such property's adjusted U.S. federal income tax basis shall, solely for U.S. federal income tax purposes, be allocated among the Members to account for any such difference using the "traditional method with curative allocations," with the curative allocations applied only to sale gain under Treasury Regulations Section 1.704-3(c) or such other method or methods as determined by the Managing Member to be appropriate and in accordance with the applicable Treasury Regulations.

(c) Any (i) recapture of depreciation or any other item of deduction shall be allocated, in accordance with Treasury Regulations Sections 1.1245-1(e) and 1.1254-5, to the Members who received the benefit of such deductions (taking into account the effect of remedial allocations), and (ii) recapture of grants credits shall be allocated to the Members in accordance with applicable law.

(d) Allocations pursuant to this Section 4.3 are solely for purposes of federal, state and local taxes and shall not affect or in any way be taken into account in computing any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

Section 4.4 Other Allocation Rules.

(a) The Members are aware of the income tax consequences of the allocations made by this Article IV and the economic impact of the allocations on the amounts receivable by them under this Agreement. The Members hereby agree to be bound by the provisions of this Article IV in reporting their share of Company income and loss for income tax purposes.

(b) All items of income, gain, loss, deduction and credit allocable to an interest in the Company that may have been Transferred shall be allocated between the Transferor and the Transferee based on the portion of the Fiscal Year during which each was recognized as the owner of such interest, without regard to the results of Company operations during any particular portion of that year and without regard to whether cash distributions were made to the Transferor or the Transferee during that year; *provided*, however, that this allocation must be made in accordance with a method permissible under Code Section 706 and the Treasury Regulations thereunder.

(c) The Members' proportionate shares of the "excess nonrecourse liabilities" of the Company, within the meaning of Treasury Regulations Section 1.752-3(a)(3), shall be allocated to the Members in any manner determined by the Managing Member and permissible under the Treasury Regulations.

ARTICLE V

DISTRIBUTIONS

Section 5.1 Distributions.

(a) *Distributions*. To the extent permitted by applicable Law and hereunder, distributions to Members may be declared by the Managing Member out of funds legally available therefor in such amounts and on such terms (including the payment dates of such distributions) as the Managing Member shall determine using such record date as the Managing Member may designate; such distribution shall be made to the Members as of the close of business on such record date on a *pro rata* basis (except that repurchases or redemptions made in accordance with Section 3.1(f) or payments made in accordance with Section 6.4 need not be on a *pro rata* basis), in accordance with the number of Units owned by each Member as of the close of business on such record date; *provided*, however, that the Managing

Member shall have the obligation to make distributions as set forth in Sections 3.1(f), 5.2 and 6.4; and provided further that, notwithstanding any other provision herein to the contrary, no distributions shall be made to any Member to the extent such distribution would render the Company insolvent. For purposes of the foregoing sentence, insolvency means the inability of the Company to meet its payment obligations when due. Promptly following the designation of a record date and the declaration of a distribution pursuant to this Section 5.1, the Managing Member shall give notice to each Member of the record date, the amount and the terms of the distribution and the payment date thereof.

(b) *Successors* . For purposes of determining the amount of distributions, each Member shall be treated as having made the Capital Contributions and as having received the Distributions made to or received by its predecessors in respect of any of such Member's Units.

(c) *Distributions In-Kind* . Except as otherwise provided in this Agreement, any distributions may be made in cash or in kind, or partly in cash and partly in kind, as determined by the Managing Member. To the extent that the Company distributes property in-kind to the Members, the Company shall be treated as making a distribution equal to the Fair Market Value of such property for purposes of Section 5.1(a) and such property shall be treated as if it were sold for an amount equal to its Fair Market Value. Any resulting gain or loss shall be allocated to the Member's Capital Accounts in accordance with Section 4.1 and Section 4.2 .

Section 5.2 **Certain Distributions and Advances** . Subject to the availability of funds and to any restrictions contained in any agreement to which the Company is bound,

(a) On each Tax Distribution Date, the Company shall, make distributions to the Members *pro rata* in proportion to their respective Units in an amount sufficient to cause SEI to receive a distribution of cash equal to its Assumed Tax Liability, if any.

(b) On or immediately prior to each Quarterly Distribution Date, the Company shall make distributions to the Members *pro rata* in proportion to their respective Units in an amount determined by the Managing Member in its sole discretion, to be sufficient to cause SEI to receive a distribution of cash equal to the dividend declared by SEI for such Quarterly Distribution Date.

(c) On each TRA Payment Date, the Company shall make distributions to the Members *pro rata* in proportion to their respective Units in an amount sufficient to cause SEI to receive a distribution of cash equal to its required payments under the Tax Receivable Agreement, subject to any deferral required under the Tax Receivable Agreement.

(d) If the cumulative amount of actual federal, state and local income taxes due from SEI for the current taxable year and all prior taxable years as of the due date for SEI's federal income tax return for such taxable year exceeds the sum of the cumulative amount of distributions pursuant to Sections 5.1 and 5.2(a) and any Tax Advances (as defined below) made to SEI through such date, the Company shall, to the extent permitted by applicable Law, but subject to the Act, the availability of funds and any restrictions contained in any agreement to which the Company is bound, make advances to SEI in an amount equal to such excess (a "Tax Advance"). Any such Tax Advance shall be treated as an advance against and, thus, shall reduce (without duplication), any future distributions that would otherwise be made to SEI pursuant to Sections 5.1 and 5.2(a) .

Section 5.3 **Distribution Upon Withdrawal** . No withdrawing Member shall be entitled to receive any distribution or the value of such Member's Interest in the Company as a result of withdrawal from the Company prior to the liquidation of the Company, except as specifically provided in this Agreement.

ARTICLE VI
MANAGEMENT

Section 6.1 **The Managing Member; Fiduciary Duties**.

(a) SEI shall be the sole Managing Member of the Company. Except as otherwise required by Law, (i) the Managing Member shall have full and complete charge of all affairs of the Company, (ii) the management and control of the Company's business activities and operations shall rest exclusively with the Managing Member, and the Managing Member shall make all decisions regarding the business, activities and operations of the Company (including the incurrence of costs and expenses) in its sole discretion without the consent of any other Member and (iii) the Members other than the Managing Member (in their capacity as such) shall not participate in the control, management, direction or operation of the activities or affairs of the Company and shall have no power to act for or bind the Company.

(b) In connection with the performance of its duties as the Managing Member of the Company, the Managing Member acknowledges that it will owe to the Members the same fiduciary duties as it would owe to the stockholders of a Delaware corporation if it were a member of the board of directors of such a corporation and the Members were stockholders of such corporation. The parties acknowledge that the Managing Member will take action through its board of directors, and that the members of the Managing Member's board of directors will owe comparable fiduciary duties to the stockholders of the Managing Member. The Managing Member will use commercially reasonable efforts, as determined in good faith by the Managing Member, to minimize any conflict of interest between the Members, on the one hand, and the stockholders of the Managing Member, on the other hand, and to effectuate any transaction that involves or affects any of the Company, the Managing Member, the Members and/or the stockholders of the Managing Member in a manner that does not (i) disadvantage the Members or their interests relative to the stockholders of the Managing Member or (ii) advantage the stockholders of the Managing Member relative to the Members or (iii) treats the Members and the stockholders of the Managing Member differently.

Section 6.2 **Officers**.

(a) The Managing Member may appoint, employ or otherwise contract with any Person for the transaction of the business of the Company or the performance of services for or on behalf of the Company, and the Managing Member may delegate to any such Persons such authority to act on behalf of the Company as the Managing Member may from time to time deem appropriate.

(b) Except as otherwise set forth herein, the president and chief executive officer of the Company (the "***President and Chief Executive Officer***") will be responsible for the general and active management of the business of the Company and its Subsidiaries and will see that all orders of the Managing Member are carried into effect. The President and Chief Executive Officer will report to the Managing Member and have the general powers and duties of management usually vested in the office of president and chief executive officer of a corporation organized under the DGCL, subject to the terms of this Agreement, and will have such other powers and duties as may be prescribed by the Managing Member or this Agreement. The President and Chief Executive Officer will have the power to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Company, except where required or permitted by Law to be otherwise signed and executed, and except where the signing and execution thereof will be expressly delegated by the Managing Member to some other Officer or agent of the Company.

(c) Except as set forth herein, the Managing Member may appoint Officers at any time, and the Officers may include one or more vice presidents, a secretary, one or more assistant secretaries, a chief financial officer, a general counsel, a treasurer, one or more assistant treasurers, a chief operating officer, an executive chairman, and any other officers that the Managing Member deems appropriate. Except as set forth herein, the Officers will serve at the pleasure of the Managing Member, subject to all rights, if any, of such Officer under any contract of employment. Any individual may hold any number of offices, and an Officer may, but need not, be a Member of the Company. The Officers will exercise such powers and perform such duties as specified in this Agreement or as determined from time to time by the Managing Member.

(d) Subject to this Agreement and to the rights, if any, of an Officer under a contract of employment, any Officer may be removed, either with or without cause, by the Managing Member. Any Officer may resign at any time by giving written notice to the Managing Member. Any resignation will take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation will not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the Officer is a party. A vacancy in any office because of death, resignation, removal, disqualification or any other cause will be filled in the manner prescribed in this Agreement for regular appointments to that office.

Section 6.3 **Warranted Reliance by Officers on Others**. In exercising their authority and performing their duties under this Agreement, the Officers shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups unless they have actual knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(a) one or more employees or other agents of the Company or subordinates whom the Officer reasonably believes to be reliable and competent in the matters presented; and

(b) any attorney, public accountant, or other person as to matters which the Officer reasonably believes to be within such person's professional or expert competence.

Section 6.4 **Indemnification**. Subject to the limitations and conditions provided in this Section 6.4, each Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or arbitrative (each, a "**Proceeding**"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact the, she or it, or a Person of which he, she or it is the legal representative, is or was a Member or an Officer, in each case, shall be indemnified by the Company to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than such law permitted the Company to provide prior to such amendment) against all judgment, penalties (including excise and similar taxes and punitive damages), fines, settlement and reasonable expenses (including reasonable attorneys' fees and expenses) actually incurred by such person in connection with such Proceeding, appeal, inquiry or investigation, if such Person acted in Good Faith. Reasonable expenses incurred by a Person of the type entitled to be indemnified under this Section 6.4 who was, is or is threatened to be made a named defendant or respondent in a Proceeding shall be paid by the Company in advance of the final disposition of the Proceeding upon receipt of an undertaking by or on behalf of such Person to repay such amount if it shall ultimately be determined that he, she or it is not entitled to be indemnified by the Company. Indemnification under this Section 6.4 shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Section 6.4 shall be deemed contract rights, and no amendment, modification or repeal of this Section 6.4 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings, appeals, inquiries or investigations arising prior to any amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Section 6.4 could involve indemnification for negligence or under theories of strict liability.

Section 6.5 **Maintenance of Insurance or Other Financial Arrangements**. In compliance with applicable Law, the Company (with the approval of the Managing Member) may purchase and maintain insurance or make other financial arrangements on behalf of any Person who is or was a Member, employee or agent of the Company, or at the request of the Company is or was serving as a manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, for any Liability asserted against such Person and Liability and expenses incurred by such Person in such Person's capacity as such, or arising out of such Person's status as such, whether or not the Company has the authority to indemnify such Person against such Liability and expenses.

Section 6.6 **Resignation or Termination of Managing Member**. SEI shall not, by any means, resign as, cease to be or be replaced as Managing Member except in compliance with this Section 6.6. No termination or replacement of SEI as Managing Member shall be effective unless proper provision is made, in compliance with this Agreement, so that the obligations of SEI, its successor (if applicable) and any new Managing Member and the rights of all Members under this Agreement and applicable Law remain in full force and effect. No appointment of a Person other than SEI (or its successor, as applicable) as Managing Member shall be effective unless SEI (or its successor, as applicable) and the new Managing Member (as applicable) provide all other Members with contractual rights, directly enforceable by such other Members against SEI (or its successor, as applicable) and the new Managing Member (as applicable), to cause (a) SEI to comply with all SEI's obligations under this Agreement (including its obligations under Section 3.7) other than those that must necessarily be taken in its capacity as Managing Member and (b) the new Managing Member to comply with all the Managing Member's obligations under this Agreement.

Section 6.7 **No Inconsistent Obligations**. The Managing Member represents that it does not have any contracts, other agreements, duties or obligations that are inconsistent with its duties and obligations (whether or not in its capacity as Managing Member) under this Agreement and covenants that, except as permitted by Section 6.1, it will not enter into any contracts or other agreements or undertake or acquire any other duties or obligations that are inconsistent with such duties and obligations.

Section 6.8 **Reclassification Events of SEI**. If a Reclassification Event occurs, the Managing Member or its successor, as the case may be, shall, as and to the extent necessary, amend this Agreement in compliance with Section 11.1, and enter into any necessary supplementary or additional agreements, to ensure that, following the effective date of the Reclassification Event: (i) the exchange rights of holders of Units set forth in Section 3.7 provide that each Unit and share of Class B Stock is exchangeable for the same amount and same type of property, securities or cash (or combination thereof) that one share of Class A Stock becomes exchangeable for or converted into as a result of the Reclassification Event and (ii) SEI or the successor to SEI, as applicable, is obligated to deliver such property, securities or cash upon such exchange. SEI shall not consummate or agree to consummate any Reclassification Event unless the successor Person, if any, becomes obligated to comply with the obligations of SEI (in whatever capacity) under this Agreement.

Section 6.9 **Certain Costs and Expenses**. The Company shall (i) pay, or cause to be paid, all costs, fees, operating expenses and other expenses of the Company (including the costs, fees and expenses of attorneys, accountants or other professionals and the compensation of all personnel providing services to the Company) incurred in pursuing and conducting, or otherwise related to, the activities of the Company, and (ii) in the sole discretion of the Managing Member, bear and/or reimburse the Managing Member for any costs, fees or expenses incurred by it in connection with serving as the Managing Member. To the extent that the Managing Member determines in its sole discretion that such expenses are related to the business and affairs of the Managing Member that are conducted through the Company and/or its Subsidiaries (including expenses that relate to the business and affairs of the Company and/or its Subsidiaries and that also relate to other activities of the Managing Member), the Managing Member may cause the Company to pay or bear all expenses of the Managing Member, including, without limitation, costs of securities offerings not borne directly by members, board of directors compensation and meeting costs, cost of periodic reports to its stockholders, litigation costs and damages arising from litigation, accounting and legal costs and franchise taxes and any other general and administrative expenses incurred as a result of the Managing Member being a publicly traded company, provided that the Company shall not pay or bear any income tax obligations of the Managing Member.

Section 6.10 **Waiver of Business Opportunities**.

(a) To the fullest extent permitted by applicable law, the Company, on behalf of itself and its subsidiaries, and each of the Members, renounces any interest or expectancy in, or in being offered an opportunity to participate in, any business opportunities that are from time to time presented to NuDevco Partners, LLC, NuDevco Partners Holdings, LLC and W. Keith Maxwell III (collectively, the “Sponsors”) or any of their respective affiliates or any of their respective agents, shareholders, members, partners, directors, officers, employees, affiliates or subsidiaries (other than the Company, SEI and their respective subsidiaries), including any director or officer of the Company who is also an agent, shareholder, member, partner, director, officer, employee, affiliate or subsidiary of any Sponsor (each, a “Business Opportunities Exempt Party”), even if the business opportunity is one that the Company or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and no Business Opportunities Exempt Party shall have any duty to communicate or offer any such business opportunity to the Company or any other Member or be liable to the Company, any other Member or their respective subsidiaries or any Member, including for breach of any fiduciary or other duty, and the Company shall indemnify each Business Opportunities Exempt Party against any claim that such person is liable to the Company or the Members for breach of any fiduciary duty, by reason of the fact that such person (i) participates in, pursues or acquires any such business opportunity, (ii) directs any such business opportunity to another person or (iii) fails to present any such business opportunity, or information regarding any such business opportunity, to the Company, any other Member or their respective subsidiaries, unless, in the case of a person who is a director or officer of the Company, such business opportunity is expressly offered to such director or officer in writing solely in his capacity as a director or officer of the Company.

(b) Neither the amendment nor repeal of this Section 6.10, nor the amendment of the Certificate of Formation of the Company, nor, to the fullest extent permitted by applicable Law, any modification of Law, shall eliminate, reduce or otherwise adversely affect any right or protection of any Person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

(c) If any provision or provisions of this Section 6.10 shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Section 6.10 (including, without limitation, each portion of any paragraph of this Section 6.10 containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Section 6.10 (including, without limitation, each such portion of any paragraph of this Section 6.10 containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Company to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by applicable Law.

ARTICLE VII

ROLE OF MEMBERS

Section 7.1 **Rights or Powers**. Other than the Managing Member, the Members, acting in their capacity as Members, shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act. A Member, any Affiliate thereof or an employee, stockholder, agent, director or officer of a Member or any Affiliate thereof, may also be an employee or be retained as an agent of the Company. The existence of these relationships and acting in such capacities will not result in the Member (other than the Managing Member) being deemed to be participating in the control of the business of the Company or otherwise affect the limited liability of the Member. Except as specifically provided herein, a Member (other than the Managing Member) shall not, in its capacity as a Member, take part in the operation, management or control of the Company's business, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company.

Section 7.2 **Voting**.

(a) Meetings of the Members may be called upon the written request of Members holding at least 50% of the outstanding Units. Such request shall state the location of the meeting and the nature of the business to be transacted at the meeting. Written notice of any such meeting shall be given to all Members not less than two Business Days nor more than 30 days prior to the date of such meeting. Members may vote in person, by proxy or by telephone at any meeting of the Members and may waive advance notice of such meeting. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in this Section 7.2. Except as otherwise expressly provided in this Agreement, the affirmative vote of the Members holding a majority of the outstanding Units shall constitute the act of the Members.

(b) Each Member may authorize any Person or Persons to act for it by proxy on all matters in which such Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by such Member or its attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

(c) Each meeting of Members shall be conducted by an Officer designated by the Managing Member or such other individual person as the Managing Member deems appropriate.

(d) Any action required or permitted to be taken by the Members may be taken without a meeting if the requisite Members whose approval is necessary consent thereto in writing.

Section 7.3 **Various Capacities**. The Members acknowledge and agree that the Members or their Affiliates will from time to time act in various capacities, including as a Member and as the Tax Matters Member.

ARTICLE VIII

TRANSFERS OF INTERESTS

Section 8.1 **Restrictions on Transfer**.

(a) Except as provided in Section 3.7 and except for the Transfers by a Member to Permitted Transferee, no Member shall Transfer all or any portion of its Interest without the prior written consent of the Managing Member in its sole discretion. If, notwithstanding the provisions of this Section 8.1(a), all or any portion of a Member's Interests are Transferred in violation of this Section 8.1(a), involuntarily, by operation of law or otherwise, then without limiting any other rights and remedies available to the other parties under this Agreement or otherwise, the Transferee of such Interest (or portion thereof) shall not be admitted to the Company as a Member or be entitled to any rights as a Member hereunder, and the Transferor will continue to be bound by all obligations hereunder, unless and until the Managing Member consents in writing to such admission, which consent shall be granted or withheld in the Managing Member's sole discretion. Any attempted or purported Transfer of all or a portion of a Member's Interests in violation of this Section 8.1(a) shall be null and void and of no force or effect whatsoever. No Units may be Transferred by a Member that also holds Class B Stock unless a corresponding number of shares of Class B Stock are transferred therewith. For the avoidance of doubt, the restrictions on Transfer contained in this Article VIII shall not apply to the Transfer of any capital stock of the Managing Member; provided that no shares of Class B Stock may be Transferred unless a corresponding number of Units are Transferred therewith in accordance with this Agreement.

(b) In addition to any other restrictions on Transfer herein contained, including the provisions of this Article VIII, in no event may any Transfer or assignment of Interests by any Member be made (i) to any Person who lacks the legal right, power or capacity to own Interests; (ii) if in the opinion of legal counsel or a qualified tax advisor to the Company such Transfer presents a material risk that such Transfer would cause the Company to cease to be classified as a partnership or to be classified as a "publicly traded partnership" within the meaning of Section 7704 (b) of the Code for federal income tax purposes; (iii) if such Transfer would cause the Company to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in Section 3(14) of ERISA) or a "disqualified person" (as defined in Section 4975(e)(2) of the Code); (iv) if such Transfer would, in the opinion of counsel to the Company, cause any portion of the assets of the Company to constitute assets of any employee benefit plan pursuant to the Plan Asset Regulation or otherwise cause the Company to be subject to regulation under ERISA; (v) if such Transfer requires the registration of such Interests or any Equity Securities issued upon any exchange of such Interests, pursuant to any applicable federal or state securities Laws; (vi) if such Transfer subjects the Company to regulation under the Investment Company Act or the Investment Advisors Act of 1940, each as amended (or any succeeding law); or (vii) by the Managing Member, if such Transfer would result in the Managing Member holding less than 2% of the outstanding Units.

Section 8.2 **Notice of Transfer**. Other than in connection with Transfers made pursuant to Section 3.7, each Member shall, after complying with the provisions of this Agreement, but in any event no later than three Business Days following any Transfer of Interests, give written notice to the Company of such Transfer. Each such notice shall describe the manner and circumstances of the Transfer.

Section 8.3 **Transferee Members**. A Transferee of Interests pursuant to this Article VIII shall have the right to become a Member only if (i) the requirements of this Article VIII are met, (ii) such Transferee executes an instrument reasonably satisfactory to the Managing Member agreeing to be bound by the terms and provisions of this Agreement and assuming all of the Transferor's then existing and future Liabilities arising under or relating to this Agreement, (iii) such Transferee represents that the Transfer was made in accordance with all applicable securities Laws, (iv) the Transferor or Transferee shall have reimbursed the Company for all reasonable expenses (including attorneys' fees and expenses) of any Transfer or proposed Transfer of a Member's Interest, whether or not consummated and (v) if such Transferee or his or her spouse is a resident of a community property jurisdiction, then

such Transferee's spouse shall also execute an instrument reasonably satisfactory to the Managing Member agreeing to be bound by the terms and provisions of this Agreement to the extent of his or her community property or quasi-community property interest, if any, in such Member's Interest. Unless agreed to in writing by the Managing Member, the admission of a Member shall not result in the release of the Transferor from any Liability that the Transferor may have to each remaining Member or to the Company under this Agreement or any other Contract between the Managing Member, the Company or any of its Subsidiaries, on the one hand, and such Transferor or any of its Affiliates, on the other hand. Written notice of the admission of a Member shall be sent promptly by the Company to each remaining Member. Notwithstanding anything to the contrary in this Section 8.3, and except as otherwise provided in this Agreement, following a Transfer by one or more Members (or a transferee of the type described in this sentence) to an Permitted Transferee of all or substantially all of their Interests, such transferee shall succeed to all of the rights of such Member(s) under this Agreement.

Section 8.4 **Legend**. Each certificate representing a Unit, if any, will be stamped or otherwise imprinted with a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933.

THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SUCH ACT.

THE TRANSFER AND VOTING OF THESE SECURITIES IS SUBJECT TO THE CONDITIONS SPECIFIED IN THE SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF SPARK HOLDCO, LLC DATED AS OF AUGUST 1, 2014, AMONG THE MEMBERS LISTED THEREIN, AS IT MAY BE AMENDED, SUPPLEMENTED AND/OR RESTATED FROM TIME TO TIME, AND NO TRANSFER OF THESE SECURITIES WILL BE VALID OR EFFECTIVE UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE ISSUER OF SUCH SECURITIES.”

ARTICLE IX

ACCOUNTING

Section 9.1 **Books of Account**. The Company shall maintain true books and records of account in which full and correct entries shall be made of all its business transactions pursuant to a system of accounting established and administered in accordance with GAAP, and shall set aside on its books all such proper accruals and reserves as shall be required under GAAP.

Section 9.2 **Tax Elections**. The Company shall make the following elections on the appropriate forms or tax returns:

- (a) to adopt the calendar year as the Company's Fiscal Year, if permitted under the Code;
- (b) to adopt the accrual method of accounting for U.S. federal income tax purposes;
- (c) to elect to amortize the organizational expenses of the Company as permitted by Code Section 709(b);
- (d) to make an election described in Section 754 of the Code (which the Company shall ensure that it has in effect at all times); and
- (e) any other election the Managing Member may deem appropriate and in the best interests of the Company.

Section 9.3 **Tax Returns; Information**. The Tax Matters Member shall arrange for the preparation and timely filing of all income and other tax and informational returns of the Company. The Tax Matters Member shall

furnish to each Member a copy of each approved return and statement, together with any schedules or other information which each Member may require in connection with such Member's own tax affairs as soon as practicable (but in no event more than 60 days after the end of each Fiscal Year).

Section 9.4 **Tax Matters Member**. The Managing Member is specially authorized and appointed to act as the "**Tax Matters Member**" under the Code and in any similar capacity under state or local Law. The Tax Matters Member may retain, at the Company's expense, such outside counsel, accountants and other professional consultants as it may reasonably deem necessary in the course of fulfilling its obligations as Tax Matters Member.

Section 9.5 **Withholding Tax Payments and Obligations**. If withholding taxes are paid or required to be paid in respect of payments made to or by the Company, such payments or obligations shall be treated as follows:

(a) If the Company receives proceeds in respect of which a tax has been withheld, the Company shall be treated as having received cash in an amount equal to the amount of such withheld tax, and, for all purposes of this Agreement but subject to Section 9.5(d), each Member shall be treated as having received a distribution pursuant to Section 5.1 equal to the portion of the withholding tax allocable to such Member, as determined by the Managing Member in its discretion.

(b) The Company is authorized to withhold from any payment made to, or any distributive share of, a Member any taxes required by Law to be withheld.

(c) Neither the Company nor the Managing Member shall be liable for any excess taxes withheld in respect of any Member, and, in the event of overwithholding, a Member's sole recourse shall be to apply for a refund from the appropriate Governmental Entity.

(d) Any taxes withheld pursuant to Section 9.5(a) or (b) shall be treated as if distributed to the relevant Member to the extent an amount equal to such withheld taxes would then be distributable to such Member, and, to the extent in excess of such distributable amounts, as a demand loan payable by the Member to the Company with interest at the Prime Rate in effect from time to time, compounded annually. The Managing Member may, in its discretion, either demand payment of the principal and accrued interest on such demand loan at any time, and enforce payment thereof by legal process, or may withhold from one or more distributions to a Member amounts sufficient to satisfy such Member's obligations under any such demand loan.

(e) If the Company is required by Law to make any payment to a Governmental Entity that is specifically attributable to a Member or a Member's status as such (including federal withholding taxes, state personal property taxes, and state unincorporated business taxes), then such Member shall indemnify and contribute to the Company in full for the entire amount of taxes paid (plus interest, penalties and related expenses if the failure of the Company to make such payment is due to the fault of the Member) (which payment shall not be deemed a Capital Contribution for purposes of this Agreement). The Managing Member may offset distributions to which a Person is otherwise entitled under this Agreement against such Person's obligation to indemnify the Company under this Section 9.5(e).

ARTICLE X

DISSOLUTION AND TERMINATION

Section 10.1 **Liquidating Events**. The Company shall dissolve and commence winding up and liquidating upon the first to occur of the following ("**Liquidating Events**"):

- (a) The sale of all or substantially all of the assets of the Company; and
- (b) The determination of the Managing Member to dissolve, wind up, and liquidate the Company.

The Members hereby agree that the Company shall not dissolve prior to the occurrence of a Liquidating Event and that no Member shall seek a dissolution of the Company, under Section 18-802 of the Act or otherwise, other than based on the matters set forth in subsections (a) and (b) above. If it is determined by a court of competent

jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating Event, the Members hereby agree to continue the business of the Company without a winding up or liquidation. In the event of a dissolution pursuant to Section 10.1(b), the relative economic rights of each class of Units immediately prior to such dissolution shall be preserved to the greatest extent practicable with respect to distributions made to Members pursuant to Section 10.3 in connection with such dissolution, taking into consideration tax and other legal constraints that may adversely affect one or more parties to such dissolution and subject to compliance with applicable laws and regulations, unless, with respect to any class of Units, holders of a majority of the Units of such class consent in writing to a treatment other than as described above.

Section 10.2 **Bankruptcy**. For purposes of this Agreement, the “bankruptcy” of a Member shall mean the occurrence of any of the following: (a) any Governmental Entity shall take possession of any substantial part of the property of that Member or shall assume control over the affairs or operations thereof, or a receiver or trustee shall be appointed, or a writ, order, attachment or garnishment shall be issued with respect to any substantial part thereof, and such possession, assumption of control, appointment, writ or order shall continue for a period of 90 consecutive days; or (b) a Member shall admit in writing of its inability to pay its debts when due, or make an assignment for the benefit of creditors; or apply for or consent to the appointment of any receiver, trustee or similar officer or for all or any substantial part of its property; or shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debts, dissolution, liquidation, or similar proceeding under the Laws of any jurisdiction; or (c) a receiver, trustee or similar officer shall be appointed for such Member or with respect to all or any substantial part of its property without the application or consent of that Member, and such appointment shall continue undischarged or unstayed for a period of 90 consecutive days or any bankruptcy, insolvency, reorganization, arrangements, readjustment of debt, dissolution, liquidation or similar proceedings shall be instituted (by petition, application or otherwise) against that Member and shall remain undismissed for a period of 90 consecutive days.

Section 10.3 **Procedure**.

(a) In the event of the dissolution of the Company for any reason, the Members shall commence to wind up the affairs of the Company and to liquidate the Company’s investments; provided that if a Member is in bankruptcy or dissolved, another Member, who shall be the Managing Member (“**Winding-Up Member**”) shall commence to wind up the affairs of the Company and, subject to Section 10.4(a), such Winding-Up Member shall have full right and unlimited discretion to determine in good faith the time, manner and terms of any sale or sales of the Property or other assets pursuant to such liquidation, having due regard to the activity and condition of the relevant market and general financial and economic conditions. The Members shall continue to share profits, losses and distributions during the period of liquidation in the same manner and proportion as though the Company had not dissolved. The Company shall engage in no further business except as may be necessary, in the reasonable discretion of the Managing Member or the Winding-Up Member, as applicable, to preserve the value of the Company’s assets during the period of dissolution and liquidation.

(b) Following the payment of all expenses of liquidation and the allocation of all Profits and Losses as provided in Article IV, the proceeds of the liquidation and any other funds of the Company shall be distributed in the following order of priority:

(i) First, to the payment and discharge of all of the Company’s debts and Liabilities to creditors (whether third parties or Members), in the order of priority as provided by Law, except any obligations to the Members in respect of their Capital Accounts;

(ii) Second, to set up such cash reserves which the Managing Member reasonably deems necessary for contingent or unforeseen Liabilities or future payments described in Section 10.3(b)(i) (which reserves when they become unnecessary shall be distributed in accordance with the provisions of subsection (iv), below); and

(iii) Third, subject to Section 5.2(b), the balance to the Members, *pro rata* in proportion to their respective Units.

(c) Except as provided in Section 10.4(a), no Member shall have any right to demand or receive property other than cash upon dissolution and termination of the Company.

(d) Upon the completion of the liquidation of the Company and the distribution of all Company funds, the Company shall terminate and the Managing Member or the Winding-Up Member, as the case may be, shall have the authority to execute and record a certificate of cancellation of the Company, as well as any and all other documents required to effectuate the dissolution and termination of the Company.

Section 10.4 **Rights of Members** .

(a) Each Member irrevocably waives any right that it may have to maintain an action for partition with respect to the property of the Company.

(b) Except as otherwise provided in this Agreement, (i) each Member shall look solely to the assets of the Company for the return of its Capital Contributions, and (ii) no Member shall have priority over any other Member as to the return of its Capital Contributions, distributions or allocations.

Section 10.5 **Notices of Dissolution** . In the event a Liquidating Event occurs or an event occurs that would, but for provisions of Section 10.1, result in a dissolution of the Company, the Company shall, within 30 days thereafter, (a) provide written notice thereof to each of the Members and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the Managing Member), and (b) comply, in a timely manner, with all filing and notice requirements under the Act or any other applicable Law.

Section 10.6 **Reasonable Time for Winding Up** . A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets in order to minimize any losses that might otherwise result from such winding up.

Section 10.7 **No Deficit Restoration** . No Member shall be personally liable for a deficit Capital Account balance of that Member, it being expressly understood that the distribution of liquidation proceeds shall be made solely from existing Company assets.

ARTICLE XI

GENERAL

Section 11.1 **Amendments; Waivers** .

(a) The terms and provisions of this Agreement may be waived, modified or amended (including by means of merger, consolidation or other business combination to which the Company is a party) only with the approval of the Managing Member; *provided, however*, that no amendment to this Agreement may:

(i) modify the limited liability of any Member, or increase the liabilities or obligations of any Member, in each case, without the consent of each such affected Member; or

(ii) materially alter or change any rights, preferences or privileges of any Interests in a manner that is different or prejudicial relative to any other Interests, without the approval of a majority in interest of the Members holding the Interests affected in such a different or prejudicial manner.

(b) Notwithstanding the foregoing subsection (a), the Managing Member, acting alone, may amend this Agreement, including Exhibit A, to reflect the admission of new Members, Transfers of Interests, the issuance of additional Units or Equity Securities, as provided by the terms of this Agreement, and, subject to Section 11.1(a), subdivisions or combinations of Units made in compliance with Section 3.1(g).

(c) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

Section 11.2 **Further Assurances**. Each party agrees that it will from time to time, upon the reasonable request of another party, execute such documents and instruments and take such further action as may be required to accomplish the purposes of this Agreement.

Section 11.3 **Successors and Assigns**. All of the terms and provisions of this Agreement shall be binding upon the parties and their respective successors and assigns, but shall inure to the benefit of and be enforceable by the successors and assigns of any Member only to the extent that they are permitted successors and assigns pursuant to the terms hereof. No party may assign its rights hereunder except as herein expressly permitted.

Section 11.4 **Entire Agreement**. This Agreement, together with all Exhibits and Schedules hereto and all other agreements referenced therein and herein, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein and therein.

Section 11.5 **Rights of Members Independent**. The rights available to the Members under this Agreement and at Law shall be deemed to be several and not dependent on each other and each such right accordingly shall be construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a Member and/or the Company from time to time and no such exercise shall exhaust the rights or preclude another Member from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

Section 11.6 **Governing Law**. This Agreement, the legal relations between the parties and any Action, whether contractual or non-contractual, instituted by any party with respect to matters arising under or growing out of or in connection with or in respect of this Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware applicable to contracts made and performed in such State and without regard to conflicts of law doctrines, except to the extent that certain matters are preempted by federal Law or are governed as a matter of controlling Law by the Law of the jurisdiction of organization of the respective parties.

Section 11.7 **Jurisdiction and Venue**. The parties hereto hereby agree and consent to be subject to the jurisdiction of any federal court of the District of Delaware or the Delaware Court of Chancery over any action, suit or proceeding (a "Legal Action") arising out of or in connection with this Agreement. The parties hereto irrevocably waive the defense of an inconvenient forum to the maintenance of any such Legal Action. Each of the parties hereto further irrevocably consents to the service of process out of any of the aforementioned courts in any such Legal Action by the mailing of copies thereof by registered mail, postage prepaid, to such party at its address set forth in this Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail. Nothing in this Section 11.7 shall affect the right of any party hereto to serve legal process in any other manner permitted by law.

Section 11.8 **Headings**. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 11.9 **Counterparts**. This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other document) and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other party.

Section 11.10 **Notices**. Any notice or other communication hereunder must be given in writing and (a) delivered in person, (b) transmitted by facsimile or telecommunications mechanism, provided, that any notice so given is also mailed as provided in clause (c), or (c) mailed by certified or registered mail, postage prepaid, receipt requested as follows:

If to the Company or the Managing Member, addressed to it at:

c/o Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Telephone: 713.600.2600
Facsimile: 832.320.2943
Attention: Gil Melman, General Counsel

With copies (which shall not constitute notice) to:

Vinson & Elkins L.L.P.
1001 Fannin, Suite 2500-6760
Houston, Texas 77002
Telephone: 713.758.2977
Facsimile: 713.615.5234
Attention: Sarah K. Morgan

or to such other address or to such other person as either party shall have last designated by such notice to the other parties. Each such notice or other communication shall be effective (i) if given by telecommunication, when transmitted to the applicable number so specified in (or pursuant to) this Section 11.10 and an appropriate answerback is received or, if transmitted after 4:00 p.m. local time on a Business Day in the jurisdiction to which such notice is sent or at any time on a day that is not a Business Day in the jurisdiction to which such notice is sent, then on the immediately following Business Day, (ii) if given by mail, on the first Business Day in the jurisdiction to which such notice is sent following the date three days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, on the Business Day when actually received at such address or, if not received on a Business Day, on the Business Day immediately following such actual receipt.

Section 11.11 **Representation By Counsel; Interpretation**. The parties acknowledge that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of Law, or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived.

Section 11.12 **Severability**. If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any Governmental Entity, the remaining provisions of this Agreement, to the extent permitted by Law shall remain in full force and effect, provided, that the essential terms and conditions of this Agreement for all parties remain valid, binding and enforceable.

Section 11.13 **Expenses**. Except as otherwise provided in this Agreement, each party shall bear its own expenses in connection with the transactions contemplated by this Agreement.

Section 11.14 **No Third Party Beneficiaries**. Except as expressly provided in Section 6.4 and Section 9.2, nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under this Agreement or otherwise create any third party beneficiary hereto.

[Signatures on Next Page]

IN WITNESS WHEREOF, each of the parties hereto has caused this Second Amended and Restated Limited Liability Company Agreement to be executed by its duly authorized officers as of the day and year first above written.

COMPANY :
SPARK HOLDCO, LLC

By: /s/ Nathan Kroeker

Name: Nathan Kroeker

Title: President and Chief Executive Officer

MANAGING MEMBER :

SPARK ENERGY, INC.

By: /s/ Nathan Kroeker

Name: Nathan Kroeker

Title: President and Chief Executive Officer

NUDEVCO RETAIL HOLDINGS, LLC

By: /s/ Terry D. Jones

Name: Terry D. Jones

Title: Executive Vice President and General Counsel

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NUDEVCO RETAIL, LLC

By: /s/ Terry D. Jones

Name: Terry D. Jones

Title: Executive Vice President and General Counsel

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EXHIBIT A

MEMBERS, IPO DATE CAPITAL ACCOUNT BALANCE AND INTERESTS

Members	IPO Date Capital Account		Percentage of Class
	Balance	Units	of Units
Spark Energy, Inc.	\$ 54,000,000	3,000,000	21.82%
NuDevco Retail Holdings, LLC	\$ 191,025,000	10,612,500	77.18%
NuDevco Retail, LLC	\$ 2,475,000	137,500	1.0%

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this “*Agreement*”) is made and entered into as of August 1, 2014, by and among Spark Energy, Inc., a Delaware corporation (the “*Company*”), NuDevco Retail, LLC, a Delaware limited liability company (“*NuDevco Retail*”) and NuDevco Retail Holdings, LLC, a Delaware limited liability company (“*NuDevco Retail Holdings*”) (each a “*Party*” and collectively, the “*Parties*”).

WITNESSETH:

WHEREAS, in connection with, and in consideration of, the transactions contemplated by the Company’s Registration Statement on Form S-1, (File No. 333-196375) initially filed with the Commission (as hereinafter defined) on May 29, 2014 and declared effective by the Commission under the Securities Act (as hereinafter defined) on July 28, 2014, the Holders (as hereinafter defined) have requested, and the Company has agreed to provide, registration rights with respect to the Registrable Securities (as hereinafter defined), as set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

Section 1. *Definitions*

Unless otherwise defined herein, as used in this Agreement, the following terms have the following meanings:

“*Agreement*” has the meaning set forth in the preamble.

“*Automatic Shelf Registration Statement*” means a registration statement filed on Form S-3 (or successor form or other appropriate form under the Securities Act) by a WKSII pursuant to General Instruction I.D. or I.C. (or other successor or appropriate instruction) of such forms, respectively.

“*Business Day*” means any day other than a Saturday, Sunday or legal holiday on which banks in New York, New York are authorized or obligated by law to close.

“*Capital Stock*” means the Class A Common Stock and the Class B Common Stock.

“*Class A Common Stock*” means the Company’s Class A common stock, par value \$0.01 per share.

“*Class B Common Stock*” means the Company’s Class B common stock, par value \$0.01 per share.

“*Commission*” means the Securities and Exchange Commission.

“*Company*” has the meaning set forth in the preamble.

“ **Entity** ” means any corporation, limited liability company, general partnership, limited partnership, venture, trust, business trust, unincorporated association, estate or other entity.

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

“ **Governmental Authority** ” means any United States, foreign, supra-national, federal, state, provincial, local or self-regulatory governmental, regulatory or administrative authority, agency, division, body, organization or commission or any judicial or arbitral body.

“ **Holder** ” means any Party owning Registrable Securities.

“ **Initiating Holder(s)** ” has the meaning set forth in Section 2(a).

“ **NuDevco Retail** ” has the meaning set forth in the preamble.

“ **NuDevco Retail Holdings** ” has the meaning set forth in the preamble.

“ **Party** ” has the meaning set forth in the preamble.

“ **Person** ” means any individual or Entity.

“ **Prospectus** ” has the meaning set forth in Section 5(a).

“ **Registering Stockholder** ” means any Holder of Registrable Securities giving the Company a notice pursuant to Section 2 or Section 3 hereof requesting that the Registrable Securities owned by it be included in a proposed registration.

“ **Registrable Securities** ” means any shares of Class A Common Stock held by the Holders from time to time, including any shares of Class A Common Stock issuable upon exchange of Units, together with the same number of shares of Class B Common Stock, other than shares of Class A Common Stock (a) sold by a Holder in a transaction in which the Holder’s rights under this Agreement are not assigned, (b) sold pursuant to an effective registration statement under the Securities Act, (c) sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act (including transactions under Rule 144, or a successor thereto, promulgated under the Securities Act) so that all transfer restrictions and restrictive legends with respect thereto, if any, are removed upon the consummation of such sale, or (d) that can be publicly sold by the Holder in question without limitations on the manner of such sale and without volume limitations pursuant to Rule 144, or a successor thereto.

“ **Registration Expenses** ” means, except for Selling Expenses (as hereinafter defined), all expenses incurred by the Company in effecting any registration pursuant to this Agreement, including all registration, qualification and filing fees, printing expenses, escrow fees, reasonable fees and disbursements of counsel for the Company, blue sky fees and expenses, the expense of any special audits incident to or required by any such registration and the reasonable fees and disbursements of one special legal counsel to represent all of the Holders together.

“ **Registration Statement** ” has the meaning set forth in Section 5(a).

“ **Rule 144** ” has the meaning set forth in Section 8.

“ **Securities Act** ” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“ **Selling Expenses** ” means all underwriting discounts and selling commissions applicable to the securities sold in a transaction or transactions registered on behalf of the Holders.

“ **Shelf Registration Statement** ” shall mean a registration statement of the Company filed with the Commission on Form S-3 (or any successor form or other appropriate form under the Securities Act) for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the Commission) covering the Registrable Securities, as applicable.

“ **Spark HoldCo LLC Agreement** ” means the Second Amended and Restated Limited Liability Company Agreement of Spark HoldCo, LLC, a Delaware limited liability company, dated as of August 1, 2014.

“ **Transfer** ” means a disposition, sale, assignment, transfer, exchange, pledge or the grant of a security interest or other encumbrance.

“ **Underwritten Offering** ” has the meaning set forth in Section 2(a).

“ **Units** ” has the meaning given to such term in the Spark HoldCo LLC Agreement.

“ **Violation** ” has the meaning set forth in Section 7(a).

“ **WKSI** ,” or a well-known seasoned issuer, has the meaning set forth in Rule 405 under the Securities Act.

Section 2. *Demand Registration Rights*

(a) *General* . If the Company shall receive from any Holder or group of Holders, at any time after the 180th day after the date of the closing of the Company’s initial public offering, a written request that the Company file a registration statement with respect to any of such Holder’s Registrable Securities or, in the event that a Shelf Registration Statement covering such Holders’ Registrable Securities is already effective, a written request that the Company engage in an underwritten offering (an “ **Underwritten Offering** ”) in respect of such Holder’s Registrable Securities (the sender(s) of such request or any similar request pursuant to this Agreement shall be known as the “ **Initiating Holder (s)** ”), then the Company shall, within thirty (30) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 2, use its commercially reasonable efforts to effect, as soon as reasonably practicable, the registration under the Securities Act of the sale of all Registrable Securities that the Holders request to be registered and/or the Underwritten Offering of all Registrable Securities that the Holders request to be offered pursuant to such Underwritten Offering. Notwithstanding the foregoing, if the Initiating Holders’ Registrable Securities that are desired to be sold in an Underwritten Offering are subject to an effective Shelf Registration Statement, neither the Company nor the Initiating Holders shall be required to include in such Underwritten

Offering other Registrable Securities that are not subject to an effective Shelf Registration Statement to the extent that such inclusion would result in a material delay in the consummation of the Underwritten Offering. Notwithstanding anything to the contrary in this Agreement, the Initiating Holders may request that the Company register the sale of such Registrable Securities on an appropriate form, including a Shelf Registration Statement (so long as the Company is eligible to use Form S-3) and, if the Company is a WKSI, an Automatic Shelf Registration Statement. The Company shall not be obligated to take any action to effect an Underwritten Offering unless such Holder or Holders reasonably anticipates that the Underwritten Offering will result in gross proceeds of at least \$30,000,000 in the aggregate.

(b) *Underwriting* . In connection with any Underwritten Offering, the Company shall retain underwriters that are reasonably acceptable to such Holder or Holders in order to permit the Holder or Holders to effect such disposition through an Underwritten Offering; provided, however, that the Company shall have the exclusive right to select the bookrunning managers. The Company and the Holder or Holders shall enter into an underwriting agreement in customary form with the underwriter that is acceptable to the Company and take all reasonable actions as are requested by the managing underwriters to facilitate the Underwritten Offering and sale of the Registrable Securities therein. Notwithstanding any other provision of this Section 2, if the underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, the Initiating Holders shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated as set forth in this Section 2(b). The shares of Registrable Securities that may be included shall be allocated first to the shares requested to be included by the Initiating Holders and then the shares requested to be included by other Holders, with such shares allocated among such other Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such other Holders at the time of filing the registration statement.

If any Holder of Registrable Securities disapproves of the terms of the underwriting, such Person may elect to withdraw therefrom by written notice to the Company, the managing underwriter and the Initiating Holders. If by the withdrawal of such Registrable Securities a greater number of shares of Registrable Securities held by other Holders may be included in such registration (up to the maximum of any limitation imposed by the underwriters), then the Company shall offer to all Holders who have included Registrable Securities in the registration the right to include additional Registrable Securities in the same proportion used in determining the underwriter limitation in this Section 2(b). If the underwriter has not limited the number of shares of Registrable Securities to be underwritten, the Company may include securities for its own account if the underwriter so agrees and if the number of shares of Registrable Securities which would otherwise have been included in such registration and underwriting will not thereby be limited.

Section 3. *Piggyback Registrations*

(a) *General* . If, at any time or from time to time after the 180th day after the date of the closing of the Company's initial public offering, the Company proposes to register the sale of any of its Class A Common Stock for own account or for the account of any third person in connection with an Underwritten Offering of its Class A Common Stock to the general public for cash on a form which would permit the registration of Registrable Securities, the Company will:

- (i) provide to each Holder written notice thereof at least five (5) Business Days before the proposed filing date; and

(ii) use its commercially reasonable efforts to include in such registration and in the underwriting involved therein, all the Registrable Securities specified in a written request or requests, made within two (2) Business Days after such Holder's receipt of such written notice from the Company, by any Holders (except that (A) if the underwriter determines that marketing factors require a shorter time period and so inform each Holder in the applicable written notice, such written request or requests must be made within five (5) days and (B) in the case of an "overnight" offering or a "bought deal," such written request or requests must be made within one (1) Business Day), except as set forth in Section 3(b); provided, however, that the Company may withdraw any Registration Statement described in this Section 3 at any time before it becomes effective, or postpone or terminate the offering of securities under such registration statement, without obligation or liability to any Holder.

(b) *Underwriting*. The right of any Holder to registration pursuant to this Section 3 shall be conditioned upon such Holder's participation in the underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable Securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. Notwithstanding any other provision of this Section 3, if the underwriter determines that marketing factors require a limitation of the number of shares to be underwritten, the Company shall so advise all Holders whose securities would otherwise be registered and underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be so limited and shall be allocated first, to the Company; second, if there remains additional availability for additional Class A Common Stock to be included in such offering, among all Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities entitled to inclusion in such registration held by such Holders at the time of filing the registration statement, and third, if there remains availability for additional securities to be included in such offering, pro rata among any other persons who have been granted registration rights, or who have requested participation in the offering.

If any Holder disapproves of the terms of any such underwriting, the Holder may elect to withdraw therefrom by written notice to the Company and the underwriter. If by the withdrawal of such Registrable Securities a greater number of shares of Registrable Securities held by other Holders may be included in such registration (up to the maximum of any limitation imposed by the underwriters), then the Company shall offer to all Holders who have included Registrable Securities in the registration the right to include additional shares of Registrable Securities in the same proportion used in determining the underwriter limitation in this Section 3(b).

Section 4. *Selection of Counsel; Registration Expenses*

(a) The Holders of a majority of the shares of Registrable Securities included in any offering pursuant to Section 2 or 3 hereof shall have the right to designate legal counsel to represent all of the Holders in connection therewith.

(b) All Registration Expenses incurred in connection with any registration, filing, qualification or compliance pursuant to Sections 2 and 3 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by the Holders shall be borne by the Holders of such securities pro rata on the basis of the number of shares so sold.

Section 5. *Further Obligations*

(a) In connection with any registration of the sale of shares of Registrable Securities under the Securities Act pursuant to this Agreement, the Company will consult with each Holder whose Registrable Securities is to be included in any such registration concerning the form of underwriting agreement (and shall provide to each such Holder the form of underwriting agreement prior to the Company's execution thereof) and shall provide to each such Holder and its representatives such other documents (including correspondence with the Commission with respect to the registration statement and the related securities offering) as such Holder shall reasonably request in connection with its participation in such registration. The Company will furnish each Registering Stockholder whose Registrable Securities is registered thereunder and each underwriter, if any, with a copy of the registration statement and all amendments thereto and will supply each such Registering Stockholder and each underwriter, if any, with copies of any prospectus forming a part of such registration statement (including a preliminary prospectus and all amendments and supplements thereto, the "**Prospectus**"), in such quantities as may be reasonably requested for the purposes of the proposed sale or distribution covered by such registration. In the event that the Company prepares and files with the Commission a registration statement on any appropriate form under the Securities Act (a "**Registration Statement**") providing for the sale of Registrable Securities held by any Registering Stockholder pursuant to its obligations under this Agreement, the Company will:

(i) prepare and file with the Commission such Registration Statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement to become effective and, upon the request of the Holders of a majority of the shares of Registrable Securities registered thereunder, keep such Registration Statement effective until the participating Holder or Holders have completed the distribution described in such Registration Statement, which may include sales from time to time for an indefinite period of time pursuant to Rule 415 under the Securities Act (or any similar rule that may be adapted by the Commission);

(ii) prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement as may be necessary to keep such Registration Statement effective; cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during the applicable period in accordance with the intended methods of disposition by the participating Holder or Holders thereof set forth in such Registration Statement or supplement to such Prospectus;

(iii) promptly notify the Registering Stockholders and the managing underwriters, if any, (A) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (B) of any request by the Commission or any state securities commission for amendments or supplements to a Registration Statement or related Prospectus or for additional information, (C) of the issuance by the Commission or any state securities commission of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (E) of the existence of any fact which results in a Registration Statement, a Prospectus or any document incorporated therein by reference containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(iv) use commercially reasonable efforts to promptly obtain the withdrawal of any order suspending the effectiveness of a Registration Statement;

(v) if requested by the managing underwriters or a Registering Stockholder, promptly incorporate in a Prospectus supplement or post-effective amendment such information as the managing underwriters or the Registering Stockholders holding a majority of the Registrable Securities being sold by Registering Stockholders agree should be included therein relating to the sale of such Registrable Securities, including without limitation information with respect to the amount of Registrable Securities being sold to such underwriters, the purchase price being paid therefor by such underwriters and with respect to any other terms of the underwritten (or best efforts underwritten) offering of the Registrable Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(vi) furnish to such Registering Stockholder and each managing underwriter at least one signed copy of the Registration Statement and any post-effective amendment thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference) (provided, however, that any such document made available by the Company through EDGAR shall be deemed so furnished);

(vii) deliver to such Registering Stockholders and the underwriters, if any, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such persons or entities may reasonably request;

(viii) prior to any public offering of Registrable Securities, register or qualify or cooperate with the Registering Stockholders, the underwriters, if any, and their respective counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions within the United States as any Registering Stockholder or underwriter reasonably requests in writing and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the applicable Registration Statement; provided, however, that

the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so required to be qualified or to take any action which would subject it to general service of process or taxation in any such jurisdiction where it is not then so subject;

(ix) cooperate with the Registering Stockholders and the managing underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to such Registration Statement and not bearing any restrictive legends, and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request at least one (1) Business Day prior to any sale of Registrable Securities to the underwriters;

(x) if any fact described in subparagraph (iii)(E) above exists, promptly prepare and file with the Commission a supplement or post-effective amendment to the applicable Registration Statement or the related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, such Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading;

(xi) cause all Registrable Securities covered by the Registration Statement to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;

(xii) provide a CUSIP number for all Registrable Securities included in such Registration Statement, not later than the effective date of the applicable Registration Statement;

(xiii) enter into such agreements (including an underwriting agreement in form reasonably satisfactory to the Company) and take all such other reasonable actions in connection therewith in order to expedite or facilitate the disposition of such Registrable Securities, including customary participation of management; and

(xiv) make available for inspection by a representative of the Registering Stockholders whose Registrable Securities are being sold pursuant to such Registration Statement, any underwriter participating in any disposition pursuant to a Registration Statement, and any attorney or accountant retained by such Registering Stockholders or underwriter, all financial and other records and any pertinent corporate documents and properties of the Company reasonably requested by such representative, underwriter, attorney or accountant in connection with such Registration Statement; provided, however, that any records, information or documents that are designated by the Company in writing as confidential shall be kept confidential by such persons or entities unless disclosure of such records, information or documents is required by court or administrative order.

(b) Notwithstanding anything to the contrary in this Agreement, to the extent the Company is a WKSI, at the time any Registrable Securities are registered pursuant to Section 2 hereof, and the Initiating Holders so request, the Company shall file an Automatic Shelf Registration Statement which covers those shares of Registrable Securities which are requested to be registered within five (5) Business Days after receipt of such request. If the Company does

not pay the filing fee covering the shares of Registrable Securities at the time the Automatic Shelf Registration Statement is filed, the Company agrees to pay such fee at such time or times as the shares of Registrable Securities are to be sold. If the Automatic Shelf Registration Statement has been outstanding for at least three (3) years, at the end of the third year the Company shall file a new Automatic Shelf Registration Statement covering the shares of Registrable Securities. If at any time when the Company is required to re-evaluate its WKSI status the Company determines that it is not a WKSI, the Company shall use its commercially reasonable efforts to file a new Shelf Registration Statement on Form S-3 (or amend the Automatic Shelf Registration Statement to a form that the Company is eligible to use) and keep such registration statement effective during the period during which such registration statement is required to be kept effective.

(c) Each Holder agrees that, upon receipt of any notice from the Company of the happening of an event of the kind described in Section 5 (a)(iii)(B) through Section 5(a)(iii)(E), such Holder will immediately discontinue disposition of shares of Registrable Securities pursuant to a Shelf Registration Statement or an Automatic Shelf Registration Statement until such stop order is vacated or such Holder receives a copy of the supplemented or amended Prospectus. If so directed by the Company, each Holder will deliver to the Company (at the reasonable expense of the Company) all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus covering such shares of Registrable Securities at the time of receipt of such notice.

Section 6. *Further Information Furnished by Holders*

It shall be a condition precedent to the obligations of the Company to take any action pursuant to Sections 2 through 5 that the Holders shall furnish to the Company such information regarding themselves, the Registrable Securities held by them, and the intended method of disposition of such securities as shall be required to effect the registration of the sale of their Registrable Securities.

Section 7. *Indemnification*

In the event any shares of Registrable Securities are included in a Registration Statement under Section 2 or 3:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of the officers, directors, partners and agents of each Holder, any underwriter (as defined in the Securities Act) for such Holder and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or Exchange Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a “**Violation**”): any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or any violation or

alleged violation by the Company or any officer, director, employee, advisor or affiliate thereof of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law, and the Company will reimburse each such Holder, officer, director, partner or agent, underwriter or controlling Person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 7(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld, conditioned, delayed or denied), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder or underwriter.

(b) To the extent permitted by law, each Holder will, if shares of Registrable Securities held by such Person are included in the securities as to which such registration, qualification or compliance is being effected, indemnify and hold harmless the Company, each of its directors and officers, each legal counsel and independent accountant of the Company, each Person, if any, who controls the Company within the meaning of the Securities Act, each underwriter (within the meaning of the Securities Act) of the Company's securities covered by such a registration statement, any Person who controls such underwriter, and any other Holder selling securities in such registration statement and each of its directors, officers, partners or agents or any Person who controls such Holder, against any losses, claims, damages, or liabilities (joint or several) to which the Company or any such underwriter, other Holder, director, officer, partner or agent or controlling Person may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration, and each such Holder will reimburse any legal or other expenses reasonably incurred by the Company or any such underwriter, other Holder, officer, director, partner or agent or controlling Person in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 7(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld, conditioned, delayed or denied); and provided, that in no event shall any indemnity under this Section 7(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 7, notify the indemnifying party in writing of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the

indemnifying party, if the indemnified party shall have been advised by counsel that representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure of any indemnified party to notify an indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of liability to the indemnified party under this Section 7 only to the extent that such failure to give notice shall materially prejudice the indemnifying party in the defense of any such claim or any such litigation, but the omission so to notify the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 7.

(d) If the indemnification provided for in this Section 7 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder.

(e) The obligations of the Company and the Holders under this Section 7 shall survive completion of any offering of Registrable Securities pursuant to a registration statement.

(f) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with any registration provided for under Sections 2 or 3 are in conflict with the foregoing provisions of this Section 7, the provisions in such underwriting agreement shall control.

Section 8. *Rule 144 Reporting*

With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act (“**Rule 144**”) and any other rule or regulation of the Commission that may at any time permit a Holder to sell securities of the Company to the public without registration, the Company agrees to use commercially reasonable efforts to:

(a) make and keep public information available (as those terms are understood and defined in Rule 144) at all times after the date hereof;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(c) furnish to any Holder, forthwith upon request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company (provided, however, that any such report or document described in this subsection (iii) made available by the Company through EDGAR shall be deemed so furnished), and (iv) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the Commission which permits the selling of any such securities without registration or pursuant to such form.

Section 9. *Assignment of Rights*

The provisions hereof will inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, except as otherwise provided herein; *provided*, *however*, that the registration rights granted hereby may be transferred only (i) by operation of Law or (ii) to any Person to whom a Holder transfers Registrable Securities, *provided* that any such transferee shall not be entitled to rights pursuant to Section 2 or 3 hereof unless such transferee of registration rights hereunder agrees to be bound by the terms and conditions hereof and executes and delivers to the Company an acknowledgment and agreement to such effect.

Section 10. *Amendment of Registration Rights*

Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the Holders of at least sixty-six and two-thirds percent (66 ²/₃ %) of the Registrable Securities or securities convertible into Registrable Securities. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Holder and the Company.

Section 11. *Expiration, Termination and Delay of Registration*

(a) The Company shall have no further obligations pursuant to this Agreement at such time as no shares of Registrable Securities are outstanding after their original issuance; provided, that the Parties' obligations under Sections 7 and 14 (and any related definitions) shall remain in full force and effect following such time.

(b) No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Agreement.

(c) Notwithstanding anything to the contrary herein, if the Company shall furnish to such Holder or Holders a certificate signed by the President of the Company stating that in the good faith judgment of the board of directors of the Company that it has determined that the Company's compliance with its obligations of Sections 2 and 3 would be detrimental to the Company because such registration would (x) materially interfere with a significant acquisition,

reorganization or other similar transaction involving the Company, (y) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential or (z) render the Company unable to comply with requirements under applicable securities laws, then the Company shall have the right to postpone compliance with such obligations for a period of not more than six months; provided, however, that such right may not be exercised more than twice in any 24-month period.

Section 12. *Limitations on Subsequent Registration Rights*

From and after the date hereof, the Company may, without the prior written consent of the Holders, enter into any agreement with any holder or prospective holder of any securities of the Company which provides such holder or prospective holder of securities of the Company registration rights that conflict with those granted to the Holders hereby.

Section 13. *"Market Stand-off" Agreement*

In connection with any Underwritten Offering pursuant to this Registration Rights Agreement, each Holder hereby agrees that it will not, to the extent requested by the Company and an underwriter of securities of the Company, sell or otherwise transfer or dispose of any Registrable Securities, except securities included in such registration, during the period beginning fourteen (14) days prior to the expected date of "pricing" of such offering and continuing for a period not to exceed one hundred eighty (180) days with respect to the initial public offering or ninety (90) days with respect to any offering subsequent to the initial public offering beginning on the date of such final prospectus (or prospectus supplement if the offering is made pursuant to a Shelf Registration Statement), and it will enter into agreements with the managing underwriters, if any, in connection with any such sale to give effect to the foregoing; provided, however, that all other Persons with registration rights (whether or not pursuant to this Agreement) enter into similar agreements. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each Holder (and the shares or securities of every other Person subject to the foregoing restriction) until the end of such one hundred eighty (180)-day or ninety (90)-day period.

Section 14. *Miscellaneous*

(a) Notices. All notices and other communications provided for or permitted hereunder shall be in writing and shall be deemed to have been duly given and received when delivered by overnight courier or hand delivery, when sent by telecopy, or five (5) days after mailing if sent by registered or certified mail (return receipt requested) postage prepaid, to the Parties at the following addresses (or at such other address for any Party as shall be specified by like notices, provided that notices of a change of address shall be effective only upon receipt thereof).

If to the Company, at:

2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: General Counsel

If to any Holder of Registrable Securities, to such Person's address as set forth on the records of the Company.

(b) *Counterparts* . This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) *Headings* . The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(d) *Governing Law* . **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.**

(e) *Severability* . If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the Parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the Parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(f) *Entire Agreement* . This Agreement is intended by the Parties as a final expression of their agreement, and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to Registrable Securities. This Agreement supersedes all prior written or oral agreements and understandings between the Parties with respect to such subject matter.

(g) *Securities Held by the Company or its Subsidiaries* . Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or its subsidiaries shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(h) *Termination* . This Agreement shall terminate when no shares of Registrable Securities remain outstanding; provided that Sections 7 and 14 shall survive any termination hereof.

(i) *Specific Performance* . The parties hereto recognize and agree that money damages may be insufficient to compensate the Holders of any Registrable Securities for breaches by the Company of the terms hereof and, consequently, that the equitable remedy of specific performance of the terms hereof will be available in the event of any such breach.

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Registration Rights Agreement to be duly executed as of the date first above written.

S P A R K E N E R G Y , I N C .

By: /s/ Nathan Kroeker
Name: Nathan Kroeker
Title: Chief Executive Officer and President

N U D E V C O R E T A I L H O L D I N G S , L L C

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President and General Counsel

N U D E V C O R E T A I L , L L C

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President and General Counsel

Signature Page to Registration Rights Agreement

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of August 1, 2014, by and between Spark Energy, Inc., a Delaware corporation (the “Corporation”), and W. Keith Maxwell III (“Indemnitee”).

RECITALS :

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Corporation (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Corporation (as may be amended, the “Bylaws”) require indemnification of the officers and directors of the Corporation, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”) and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, the “Certificate of Incorporation”) and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Corporation without adequate protection, (iii) the Corporation desires Indemnitee to serve in such capacity, and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that he be so indemnified.

AGREEMENT :

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. (a) As used in this Agreement:

“Affiliate” of any specified Person shall mean any other Person controlling, controlled by or under common control with such specified Person.

“Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of (i) the Corporation or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

“Disinterested Director” shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“Enterprise” shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary.

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

“Expenses” shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“Indemnity Obligations” shall mean all obligations of the Corporation to Indemnitee under this Agreement, including the Corporation’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“Independent Counsel” shall mean a law firm of fifty (50) or more attorneys, or a member of a law firm of fifty (50) or more attorneys, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

“Person” shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

“Proceeding” shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Corporation, or by reason of the fact that he is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor), or any claim, issue or matter therein.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Liabilities and Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to such indemnification.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a witness or otherwise a participant in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses suffered or incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Liabilities and Expenses suffered or reasonably incurred by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Corporation except with respect to any excess beyond the amount paid under such insurance policy;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

Section 8. Advancement. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the extent not prohibited by applicable law, the Expenses reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7 hereof.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall promptly notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Corporate Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel selected by Indemnitee and approved by the Corporation to defend Indemnitee in such Proceeding, at the sole expense of the Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Corporation assume the defense of Indemnitee in such Proceeding, in which case the Corporation shall assume the defense of such Proceeding with counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Corporation shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the

reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed. The Corporation may not settle or compromise any Proceeding without the prior written consent of Indemnitee.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Corporation is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Corporation), (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (i) thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding, each of the Corporation and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; *provided, however*, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Corporation's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; *provided further, however*, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Corporation.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other Person takes or threatens to take any action to declare this Agreement void or

unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided* that, in absence of any such determination with respect to such Proceeding, the Corporation shall advance Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy 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 prevent the concurrent assertion or employment of any other right or remedy.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with

respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnitee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee or advance Expenses or Liabilities to Indemnitee in respect of any Proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnitee and advance Expenses or Liabilities to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any Corporation insurance policy, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnitee may be associated or their insurers affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnitee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnitee may be associated with respect to any Liability arising as a result of Indemnitee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Corporation or any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement.

(c) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Corporation or of any other Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnitee may be entitled from one or more Persons with whom or which Indemnitee may be associated to the same extent as the Corporation's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to the rights of recovery of Indemnitee, including rights of indemnification provided to Indemnitee from any other person or entity with whom Indemnitee may be associated; *provided, however*, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnitee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnitee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnitee shall have ceased to serve as a director, officer, employee or agent of the Corporation or any other Enterprise and (ii) the date of final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any other Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Corporation (or any of its subsidiaries

or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Corporation, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 22. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SPARK ENERGY, INC.

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President, General Counsel and Corporate Secretary

INDEMNITEE

By: /s/ W. Keith Maxwell III
Name: W. Keith Maxwell III
Title: Director

Signature Page to Indemnification Agreement

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of August 1, 2014, by and between Spark Energy, Inc., a Delaware corporation (the “Corporation”), and Nathan Kroeker (“Indemnitee”).

RECITALS :

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Corporation (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Corporation (as may be amended, the “Bylaws”) require indemnification of the officers and directors of the Corporation, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”) and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, the “Certificate of Incorporation”) and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Corporation without adequate protection, (iii) the Corporation desires Indemnitee to serve in such capacity, and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that he be so indemnified.

AGREEMENT :

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. (a) As used in this Agreement:

“Affiliate” of any specified Person shall mean any other Person controlling, controlled by or under common control with such specified Person.

“Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of (i) the Corporation or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

“Disinterested Director” shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“Enterprise” shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary.

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

“Expenses” shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“Indemnity Obligations” shall mean all obligations of the Corporation to Indemnitee under this Agreement, including the Corporation’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“Independent Counsel” shall mean a law firm of fifty (50) or more attorneys, or a member of a law firm of fifty (50) or more attorneys, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

“Person” shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

“Proceeding” shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Corporation, or by reason of the fact that he is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor), or any claim, issue or matter therein.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Liabilities and Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to such indemnification.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a witness or otherwise a participant in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses suffered or incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Liabilities and Expenses suffered or reasonably incurred by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Corporation except with respect to any excess beyond the amount paid under such insurance policy;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

Section 8. Advancement. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the extent not prohibited by applicable law, the Expenses reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7 hereof.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall promptly notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Corporate Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel selected by Indemnitee and approved by the Corporation to defend Indemnitee in such Proceeding, at the sole expense of the Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Corporation assume the defense of Indemnitee in such Proceeding, in which case the Corporation shall assume the defense of such Proceeding with counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Corporation shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the

reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed. The Corporation may not settle or compromise any Proceeding without the prior written consent of Indemnitee.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Corporation is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Corporation), (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (i) thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding, each of the Corporation and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; *provided, however*, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Corporation's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; *provided further, however*, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Corporation.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other Person takes or threatens to take any action to declare this Agreement void or

unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided* that, in absence of any such determination with respect to such Proceeding, the Corporation shall advance Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy 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 prevent the concurrent assertion or employment of any other right or remedy.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with

respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnitee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee or advance Expenses or Liabilities to Indemnitee in respect of any Proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnitee and advance Expenses or Liabilities to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any Corporation insurance policy, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnitee may be associated or their insurers affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnitee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnitee may be associated with respect to any Liability arising as a result of Indemnitee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Corporation or any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement.

(c) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Corporation or of any other Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnitee may be entitled from one or more Persons with whom or which Indemnitee may be associated to the same extent as the Corporation's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to the rights of recovery of Indemnitee, including rights of indemnification provided to Indemnitee from any other person or entity with whom Indemnitee may be associated; *provided, however*, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnitee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnitee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnitee shall have ceased to serve as a director, officer, employee or agent of the Corporation or any other Enterprise and (ii) the date of final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any other Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Corporation (or any of its subsidiaries

or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Corporation, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 22. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SPARK ENERGY, INC.

INDEMNITEE

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President, General Counsel and Corporate Secretary

By: /s/ Nathan Kroeker
Name: Nathan Kroeker
Title: Director, President and Chief Executive Officer

Signature Page to Indemnification Agreement

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of August 1, 2014, by and between Spark Energy, Inc., a Delaware corporation (the “Corporation”), and Allison Wall (“Indemnitee”).

RECITALS :

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Corporation (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Corporation (as may be amended, the “Bylaws”) require indemnification of the officers and directors of the Corporation, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”) and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, the “Certificate of Incorporation”) and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Corporation without adequate protection, (iii) the Corporation desires Indemnitee to serve in such capacity, and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that he be so indemnified.

AGREEMENT :

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions . (a) As used in this Agreement:

“Affiliate” of any specified Person shall mean any other Person controlling, controlled by or under common control with such specified Person.

“Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of (i) the Corporation or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

“Disinterested Director” shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“Enterprise” shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary.

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

“Expenses” shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“Indemnity Obligations” shall mean all obligations of the Corporation to Indemnitee under this Agreement, including the Corporation’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“Independent Counsel” shall mean a law firm of fifty (50) or more attorneys, or a member of a law firm of fifty (50) or more attorneys, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

“Person” shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

“Proceeding” shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Corporation, or by reason of the fact that he is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor), or any claim, issue or matter therein.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Liabilities and Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to such indemnification.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a witness or otherwise a participant in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses suffered or incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Liabilities and Expenses suffered or reasonably incurred by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Corporation except with respect to any excess beyond the amount paid under such insurance policy;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

Section 8. Advancement. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the extent not prohibited by applicable law, the Expenses reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7 hereof.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall promptly notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Corporate Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel selected by Indemnitee and approved by the Corporation to defend Indemnitee in such Proceeding, at the sole expense of the Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Corporation assume the defense of Indemnitee in such Proceeding, in which case the Corporation shall assume the defense of such Proceeding with counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Corporation shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the

reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed. The Corporation may not settle or compromise any Proceeding without the prior written consent of Indemnitee.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Corporation is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Corporation), (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (i) thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding, each of the Corporation and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; *provided, however*, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Corporation's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; *provided further, however*, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Corporation.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other Person takes or threatens to take any action to declare this Agreement void or

unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided* that, in absence of any such determination with respect to such Proceeding, the Corporation shall advance Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy 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 prevent the concurrent assertion or employment of any other right or remedy.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with

respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnatee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnatee may be associated to indemnify Indemnatee or advance Expenses or Liabilities to Indemnatee in respect of any Proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnatee and advance Expenses or Liabilities to Indemnatee hereunder to the fullest extent provided herein without regard to any rights Indemnatee may have against any other Person with whom or which Indemnatee may be associated or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnatee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event any other Person with whom or which Indemnatee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any Corporation insurance policy, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnatee may be associated or their insurers affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnatee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnatee may be associated with respect to any Liability arising as a result of Indemnatee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Corporation or any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement.

(c) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Corporation or of any other Enterprise, Indemnatee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnatee may be entitled from one or more Persons with whom or which Indemnatee may be associated to the same extent as the Corporation's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to the rights of recovery of Indemnatee, including rights of indemnification provided to Indemnatee from any other person or entity with whom Indemnatee may be associated; *provided, however*, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnatee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnatee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnatee shall have ceased to serve as a director, officer, employee or agent of the Corporation or any other Enterprise and (ii) the date of final termination of any Proceeding then pending in respect of which Indemnatee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnatee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnatee and Indemnatee's heirs, executors and administrators. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any other Enterprise) and Indemnatee. Indemnatee specifically acknowledges that Indemnatee's employment with the Corporation (or any of its subsidiaries

or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Corporation, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided*, *however*, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 22. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SPARK ENERGY, INC.

INDEMNITEE

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President, General Counsel and Corporate Secretary

By: /s/ Allison Wall
Name: Allison Wall
Title: Chief Operating Officer

Signature Page to Indemnification Agreement

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of August 1, 2014, by and between Spark Energy, Inc., a Delaware corporation (the “Corporation”), and Georganne Hodges (“Indemnitee”).

RECITALS :

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Corporation (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Corporation (as may be amended, the “Bylaws”) require indemnification of the officers and directors of the Corporation, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”) and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, the “Certificate of Incorporation”) and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Corporation without adequate protection, (iii) the Corporation desires Indemnitee to serve in such capacity, and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that he be so indemnified.

AGREEMENT :

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. (a) As used in this Agreement:

“Affiliate” of any specified Person shall mean any other Person controlling, controlled by or under common control with such specified Person.

“Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of (i) the Corporation or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

“Disinterested Director” shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“Enterprise” shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary.

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

“Expenses” shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“Indemnity Obligations” shall mean all obligations of the Corporation to Indemnitee under this Agreement, including the Corporation’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“Independent Counsel” shall mean a law firm of fifty (50) or more attorneys, or a member of a law firm of fifty (50) or more attorneys, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

“Person” shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

“Proceeding” shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Corporation, or by reason of the fact that he is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor), or any claim, issue or matter therein.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Liabilities and Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to such indemnification.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a witness or otherwise a participant in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses suffered or incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Liabilities and Expenses suffered or reasonably incurred by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Corporation except with respect to any excess beyond the amount paid under such insurance policy;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

Section 8. Advancement. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the extent not prohibited by applicable law, the Expenses reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7 hereof.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall promptly notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Corporate Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel selected by Indemnitee and approved by the Corporation to defend Indemnitee in such Proceeding, at the sole expense of the Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Corporation assume the defense of Indemnitee in such Proceeding, in which case the Corporation shall assume the defense of such Proceeding with counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Corporation shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the

reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed. The Corporation may not settle or compromise any Proceeding without the prior written consent of Indemnitee.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Corporation is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Corporation), (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (i) thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding, each of the Corporation and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; *provided, however*, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Corporation's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; *provided further, however*, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Corporation.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other Person takes or threatens to take any action to declare this Agreement void or

unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided* that, in absence of any such determination with respect to such Proceeding, the Corporation shall advance Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy 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 prevent the concurrent assertion or employment of any other right or remedy.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with

respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnatee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnatee may be associated to indemnify Indemnatee or advance Expenses or Liabilities to Indemnatee in respect of any Proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnatee and advance Expenses or Liabilities to Indemnatee hereunder to the fullest extent provided herein without regard to any rights Indemnatee may have against any other Person with whom or which Indemnatee may be associated or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnatee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event any other Person with whom or which Indemnatee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any Corporation insurance policy, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnatee may be associated or their insurers affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnatee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnatee may be associated with respect to any Liability arising as a result of Indemnatee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Corporation or any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement.

(c) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Corporation or of any other Enterprise, Indemnatee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnatee may be entitled from one or more Persons with whom or which Indemnatee may be associated to the same extent as the Corporation's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to the rights of recovery of Indemnatee, including rights of indemnification provided to Indemnatee from any other person or entity with whom Indemnatee may be associated; *provided, however*, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnatee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnatee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnatee shall have ceased to serve as a director, officer, employee or agent of the Corporation or any other Enterprise and (ii) the date of final termination of any Proceeding then pending in respect of which Indemnatee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnatee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnatee and Indemnatee's heirs, executors and administrators. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any other Enterprise) and Indemnatee. Indemnatee specifically acknowledges that Indemnatee's employment with the Corporation (or any of its subsidiaries

or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Corporation, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 22. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SPARK ENERGY, INC.

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President, General Counsel and Corporate Secretary

INDEMNITEE

By: /s/ Georganne Hodges
Name: Georganne Hodges
Title: Chief Financial Officer

Signature Page to Indemnification Agreement

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of August 1, 2014, by and between Spark Energy, Inc., a Delaware corporation (the “Corporation”), and Gil Melman (“Indemnitee”).

RECITALS :

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Corporation (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Corporation (as may be amended, the “Bylaws”) require indemnification of the officers and directors of the Corporation, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”) and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, the “Certificate of Incorporation”) and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Corporation without adequate protection, (iii) the Corporation desires Indemnitee to serve in such capacity, and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that he be so indemnified.

AGREEMENT :

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. (a) As used in this Agreement:

“Affiliate” of any specified Person shall mean any other Person controlling, controlled by or under common control with such specified Person.

“Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of (i) the Corporation or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

“Disinterested Director” shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“Enterprise” shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary.

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

“Expenses” shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“Indemnity Obligations” shall mean all obligations of the Corporation to Indemnitee under this Agreement, including the Corporation’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“Independent Counsel” shall mean a law firm of fifty (50) or more attorneys, or a member of a law firm of fifty (50) or more attorneys, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

“Person” shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

“Proceeding” shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Corporation, or by reason of the fact that he is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor), or any claim, issue or matter therein.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Liabilities and Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to such indemnification.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a witness or otherwise a participant in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses suffered or incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Liabilities and Expenses suffered or reasonably incurred by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Corporation except with respect to any excess beyond the amount paid under such insurance policy;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

Section 8. Advancement. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the extent not prohibited by applicable law, the Expenses reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7 hereof.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall promptly notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Corporate Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel selected by Indemnitee and approved by the Corporation to defend Indemnitee in such Proceeding, at the sole expense of the Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Corporation assume the defense of Indemnitee in such Proceeding, in which case the Corporation shall assume the defense of such Proceeding with counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Corporation shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the

reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed. The Corporation may not settle or compromise any Proceeding without the prior written consent of Indemnitee.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Corporation is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Corporation), (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (i) thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding, each of the Corporation and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; *provided, however*, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Corporation's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; *provided further, however*, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Corporation.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other Person takes or threatens to take any action to declare this Agreement void or

unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided* that, in absence of any such determination with respect to such Proceeding, the Corporation shall advance Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy 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 prevent the concurrent assertion or employment of any other right or remedy.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with

respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnatee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnatee may be associated to indemnify Indemnatee or advance Expenses or Liabilities to Indemnatee in respect of any Proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnatee and advance Expenses or Liabilities to Indemnatee hereunder to the fullest extent provided herein without regard to any rights Indemnatee may have against any other Person with whom or which Indemnatee may be associated or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnatee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event any other Person with whom or which Indemnatee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any Corporation insurance policy, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnatee may be associated or their insurers affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnatee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnatee may be associated with respect to any Liability arising as a result of Indemnatee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Corporation or any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement.

(c) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Corporation or of any other Enterprise, Indemnatee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnatee may be entitled from one or more Persons with whom or which Indemnatee may be associated to the same extent as the Corporation's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to the rights of recovery of Indemnatee, including rights of indemnification provided to Indemnatee from any other person or entity with whom Indemnatee may be associated; *provided, however*, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnatee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnatee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnatee shall have ceased to serve as a director, officer, employee or agent of the Corporation or any other Enterprise and (ii) the date of final termination of any Proceeding then pending in respect of which Indemnatee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnatee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnatee and Indemnatee's heirs, executors and administrators. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any other Enterprise) and Indemnatee. Indemnatee specifically acknowledges that Indemnatee's employment with the Corporation (or any of its subsidiaries

or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Corporation, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 22. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SPARK ENERGY, INC.

INDEMNITEE

By: /s/ Nathan Kroeker
Name: Nathan Kroeker
Title: President and Chief Executive Officer

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President, General Counsel and Corporate Secretary

Signature Page to Indemnification Agreement

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of August 1, 2014, by and between Spark Energy, Inc., a Delaware corporation (the “Corporation”), and James G. Jones II (“Indemnitee”).

RECITALS :

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Corporation (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Corporation (as may be amended, the “Bylaws”) require indemnification of the officers and directors of the Corporation, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”) and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, the “Certificate of Incorporation”) and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Corporation without adequate protection, (iii) the Corporation desires Indemnitee to serve in such capacity, and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that he be so indemnified.

AGREEMENT :

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. (a) As used in this Agreement:

“Affiliate” of any specified Person shall mean any other Person controlling, controlled by or under common control with such specified Person.

“Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of (i) the Corporation or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

“Disinterested Director” shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“Enterprise” shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary.

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

“Expenses” shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“Indemnity Obligations” shall mean all obligations of the Corporation to Indemnitee under this Agreement, including the Corporation’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“Independent Counsel” shall mean a law firm of fifty (50) or more attorneys, or a member of a law firm of fifty (50) or more attorneys, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

“Person” shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

“Proceeding” shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Corporation, or by reason of the fact that he is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor), or any claim, issue or matter therein.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Liabilities and Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to such indemnification.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a witness or otherwise a participant in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses suffered or incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Liabilities and Expenses suffered or reasonably incurred by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Corporation except with respect to any excess beyond the amount paid under such insurance policy;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

Section 8. Advancement. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the extent not prohibited by applicable law, the Expenses reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7 hereof.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall promptly notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Corporate Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel selected by Indemnitee and approved by the Corporation to defend Indemnitee in such Proceeding, at the sole expense of the Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Corporation assume the defense of Indemnitee in such Proceeding, in which case the Corporation shall assume the defense of such Proceeding with counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Corporation shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the

reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed. The Corporation may not settle or compromise any Proceeding without the prior written consent of Indemnitee.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Corporation is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Corporation), (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (i) thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding, each of the Corporation and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; *provided, however*, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Corporation's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; *provided further, however*, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Corporation.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other Person takes or threatens to take any action to declare this Agreement void or

unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided* that, in absence of any such determination with respect to such Proceeding, the Corporation shall advance Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy 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 prevent the concurrent assertion or employment of any other right or remedy.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with

respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnatee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnatee may be associated to indemnify Indemnatee or advance Expenses or Liabilities to Indemnatee in respect of any Proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnatee and advance Expenses or Liabilities to Indemnatee hereunder to the fullest extent provided herein without regard to any rights Indemnatee may have against any other Person with whom or which Indemnatee may be associated or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnatee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event any other Person with whom or which Indemnatee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any Corporation insurance policy, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnatee may be associated or their insurers affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnatee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnatee may be associated with respect to any Liability arising as a result of Indemnatee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Corporation or any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement.

(c) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Corporation or of any other Enterprise, Indemnatee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnatee may be entitled from one or more Persons with whom or which Indemnatee may be associated to the same extent as the Corporation's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to the rights of recovery of Indemnatee, including rights of indemnification provided to Indemnatee from any other person or entity with whom Indemnatee may be associated; *provided*, *however*, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnatee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnatee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnatee shall have ceased to serve as a director, officer, employee or agent of the Corporation or any other Enterprise and (ii) the date of final termination of any Proceeding then pending in respect of which Indemnatee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnatee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnatee and Indemnatee's heirs, executors and administrators. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any other Enterprise) and Indemnatee. Indemnatee specifically acknowledges that Indemnatee's employment with the Corporation (or any of its subsidiaries

or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Corporation, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 22. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SPARK ENERGY, INC.

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President, General Counsel and Corporate Secretary

INDEMNITEE

By: /s/ James G. Jones II
Name: James G. Jones II
Title: Director

Signature Page to Indemnification Agreement

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of August 1, 2014, by and between Spark Energy, Inc., a Delaware corporation (the “Corporation”), and John Eads (“Indemnitee”).

RECITALS :

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Corporation (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Corporation (as may be amended, the “Bylaws”) require indemnification of the officers and directors of the Corporation, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”) and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, the “Certificate of Incorporation”) and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Corporation without adequate protection, (iii) the Corporation desires Indemnitee to serve in such capacity, and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that he be so indemnified.

AGREEMENT :

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. (a) As used in this Agreement:

“Affiliate” of any specified Person shall mean any other Person controlling, controlled by or under common control with such specified Person.

“Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of (i) the Corporation or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

“Disinterested Director” shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“Enterprise” shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary.

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

“Expenses” shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“Indemnity Obligations” shall mean all obligations of the Corporation to Indemnitee under this Agreement, including the Corporation’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“Independent Counsel” shall mean a law firm of fifty (50) or more attorneys, or a member of a law firm of fifty (50) or more attorneys, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

“Person” shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

“Proceeding” shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Corporation, or by reason of the fact that he is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor), or any claim, issue or matter therein.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Liabilities and Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to such indemnification.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a witness or otherwise a participant in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses suffered or incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Liabilities and Expenses suffered or reasonably incurred by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Corporation except with respect to any excess beyond the amount paid under such insurance policy;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

Section 8. Advancement. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the extent not prohibited by applicable law, the Expenses reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7 hereof.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall promptly notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Corporate Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel selected by Indemnitee and approved by the Corporation to defend Indemnitee in such Proceeding, at the sole expense of the Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Corporation assume the defense of Indemnitee in such Proceeding, in which case the Corporation shall assume the defense of such Proceeding with counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Corporation shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the

reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed. The Corporation may not settle or compromise any Proceeding without the prior written consent of Indemnitee.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Corporation is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Corporation), (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (i) thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding, each of the Corporation and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; *provided, however*, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Corporation's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; *provided further, however*, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Corporation.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other Person takes or threatens to take any action to declare this Agreement void or

unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided* that, in absence of any such determination with respect to such Proceeding, the Corporation shall advance Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy 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 prevent the concurrent assertion or employment of any other right or remedy.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with

respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnitee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnitee may be associated to indemnify Indemnitee or advance Expenses or Liabilities to Indemnitee in respect of any Proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnitee and advance Expenses or Liabilities to Indemnitee hereunder to the fullest extent provided herein without regard to any rights Indemnitee may have against any other Person with whom or which Indemnitee may be associated or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnitee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event any other Person with whom or which Indemnitee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any Corporation insurance policy, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnitee may be associated or their insurers affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnitee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnitee may be associated with respect to any Liability arising as a result of Indemnitee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Corporation or any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement.

(c) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Corporation or of any other Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnitee may be entitled from one or more Persons with whom or which Indemnitee may be associated to the same extent as the Corporation's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to the rights of recovery of Indemnitee, including rights of indemnification provided to Indemnitee from any other person or entity with whom Indemnitee may be associated; *provided, however*, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnitee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnitee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnitee shall have ceased to serve as a director, officer, employee or agent of the Corporation or any other Enterprise and (ii) the date of final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any other Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Corporation (or any of its subsidiaries

or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Corporation, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 22. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SPARK ENERGY, INC.

INDEMNITEE

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President, General Counsel and Corporate Secretary

By: /s/ John Eads
Name: John Eads
Title: Director

Signature Page to Indemnification Agreement

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of August 1, 2014, by and between Spark Energy, Inc., a Delaware corporation (the “Corporation”), and Kenneth M. Hartwick (“Indemnitee”).

RECITALS :

WHEREAS, directors, officers and other persons in service to corporations or business enterprises are subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Corporation or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve as directors, officers or in other capacities unless they are provided with adequate protection through insurance and adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Corporation (the “Board”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Corporation and its stockholders and that the Corporation should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, (i) the Amended and Restated Bylaws of the Corporation (as may be amended, the “Bylaws”) require indemnification of the officers and directors of the Corporation, (ii) Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”) and (iii) the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Corporation and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws and the Amended and Restated Certificate of Incorporation of the Corporation (as may be amended, the “Certificate of Incorporation”) and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, (i) Indemnitee does not regard the protection available under the Bylaws and insurance as adequate in the present circumstances, (ii) Indemnitee may not be willing to serve or continue to serve as a director or officer of the Corporation without adequate protection, (iii) the Corporation desires Indemnitee to serve in such capacity, and (iv) Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Corporation on the condition that he be so indemnified.

AGREEMENT :

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

Section 1. Definitions. (a) As used in this Agreement:

“Affiliate” of any specified Person shall mean any other Person controlling, controlled by or under common control with such specified Person.

“Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of (i) the Corporation or (ii) any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation.

“Disinterested Director” shall mean a director of the Corporation who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

“Enterprise” shall mean the Corporation and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary.

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

“Expenses” shall mean all reasonable costs, expenses, fees and charges, including, without limitation, attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include, without limitation, (i) expenses incurred in connection with any appeal resulting from, incurred by Indemnitee in connection with, arising out of, or in respect of or relating to, any Proceeding, including, without limitation, the premium, security for, and other costs relating to any cost bond, superseded bond, or other appeal bond or its equivalent, (ii) for purposes of Section 12(d) hereof only, expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise, (iii) any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, and (iv) any interest, assessments or other charges in respect of the foregoing. “Expenses” shall not include “Liabilities.”

“Indemnity Obligations” shall mean all obligations of the Corporation to Indemnitee under this Agreement, including the Corporation’s obligations to provide indemnification to Indemnitee and advance Expenses to Indemnitee under this Agreement.

“Independent Counsel” shall mean a law firm of fifty (50) or more attorneys, or a member of a law firm of fifty (50) or more attorneys, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder; provided, however, that the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

“Liabilities” shall mean all claims, liabilities, damages, losses, judgments, orders, fines, penalties and other amounts payable in connection with, arising out of, or in respect of or relating to any Proceeding, including, without limitation, amounts paid in settlement in any Proceeding and all costs and expenses in complying with any judgment, order or decree issued or entered in connection with any Proceeding or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Proceeding.

“Person” shall mean any individual, corporation, partnership, limited partnership, limited liability company, trust, governmental agency or body or any other legal entity.

“Proceeding” shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, formal or informal hearing, inquiry or investigation, litigation, inquiry, administrative hearing or any other actual, threatened or completed judicial, administrative or arbitration proceeding (including, without limitation, any such proceeding under the Securities Act of 1933, as amended, or the Exchange Act or any other federal law, state law, statute or regulation), whether brought in the right of the Corporation or otherwise, and whether of a civil, criminal, administrative or investigative nature, in each case, in which Indemnitee was, is or will be, or is threatened to be, involved as a party, witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any actual or alleged action taken by Indemnitee or of any action on Indemnitee’s part while acting as director or officer of the Corporation, or by reason of the fact that he is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement can be provided under this Agreement.

(b) For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

Section 2. Indemnity in Third-Party Proceedings. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or reasonably incurred (and, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding (other than any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor), or any claim, issue or matter therein.

Section 3. Indemnity in Proceedings by or in the Right of the Corporation. The Corporation shall indemnify and hold harmless Indemnitee, to the fullest extent permitted by applicable law, from and against all Liabilities and Expenses suffered or incurred by Indemnitee or on Indemnitee’s behalf in connection with any Proceeding brought by or in the right of the Corporation to procure a judgment in its favor, or any claim, issue or matter therein. No indemnification for Liabilities and Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Corporation, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to such indemnification.

Section 4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, and without limiting the rights of Indemnitee under any other provision hereof, including any rights to indemnification pursuant to Sections 2 or 3 hereof, to the fullest extent permitted by applicable law, to the extent that Indemnitee is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with each successfully resolved Proceeding, claim, issue or matter. For purposes of this Section 4 and without limitation, the termination of any Proceeding or claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 5. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee’s Corporate Status, a witness or otherwise a participant in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses suffered or incurred (or, in the case of retainers, reasonably expected to be incurred) by Indemnitee or on Indemnitee’s behalf in connection therewith.

Section 6. Additional Indemnification. Notwithstanding any limitation in Sections 2, 3 or 4 hereof, the Corporation shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Corporation to procure a judgment in its favor) against all Liabilities and Expenses suffered or reasonably incurred by Indemnitee in connection with such Proceeding, including but not limited to:

(a) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(b) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 7. Exclusions. Notwithstanding any provision in this Agreement, the Corporation shall not be obligated under this Agreement to indemnify or hold harmless Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy obtained by the Corporation except with respect to any excess beyond the amount paid under such insurance policy;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) except as provided in Section 12(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Corporation or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law; or

(d) if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful.

Section 8. Advancement. In accordance with the pre-existing requirements of the Bylaws, and notwithstanding any provision of this Agreement to the contrary, the Corporation shall advance, to the extent not prohibited by applicable law, the Expenses reasonably incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Corporation of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all Expenses reasonably incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advances claimed. Indemnitee shall qualify for advances upon the execution and delivery to the Corporation of this Agreement, which shall constitute an undertaking providing that Indemnitee undertakes to repay the amounts advanced to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Corporation. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7 hereof.

Section 9. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall promptly notify the Corporation in writing of any Proceeding with respect to which Indemnitee intends to seek indemnification or advancement hereunder following the receipt by Indemnitee of written notice thereof. The written notification to the Corporation shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. Any delay or failure by Indemnitee to notify the Corporation hereunder will not relieve the Corporation from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay or failure in so notifying the Corporation shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Corporate Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event Indemnitee is entitled to indemnification and/or advancement with respect to any Proceeding, Indemnitee may, at Indemnitee's option, (i) retain counsel selected by Indemnitee and approved by the Corporation to defend Indemnitee in such Proceeding, at the sole expense of the Corporation (which approval shall not be unreasonably withheld, conditioned or delayed), or (ii) have the Corporation assume the defense of Indemnitee in such Proceeding, in which case the Corporation shall assume the defense of such Proceeding with counsel selected by the Corporation and approved by Indemnitee (which approval shall not be unreasonably withheld, conditioned or delayed) within ten (10) days of the Corporation's receipt of written notice of Indemnitee's election to cause the Corporation to do so. If the Corporation is required to assume the defense of any such Proceeding, it shall engage legal counsel for such defense, and the Corporation shall be solely responsible for all fees and expenses of such legal counsel and otherwise of such defense. Such legal counsel may represent both Indemnitee and the Corporation (and any other party or parties entitled to be indemnified by the Corporation with respect to such matter) unless, in the

reasonable opinion of legal counsel to Indemnitee, there is a conflict of interest between Indemnitee and the Corporation (or any other such party or parties) or there are legal defenses available to Indemnitee that are not available to the Corporation (or any such other party or parties). Notwithstanding either party's assumption of responsibility for defense of a Proceeding, each party shall have the right to engage separate counsel at its own expense. The party having responsibility for defense of a Proceeding shall provide the other party and its counsel with all copies of pleadings and material correspondence relating to the Proceeding. Indemnitee and the Corporation shall reasonably cooperate in the defense of any Proceeding with respect to which indemnification is sought hereunder, regardless of whether the Corporation or Indemnitee assumes the defense thereof. Indemnitee may not settle or compromise any Proceeding without the prior written consent of the Corporation, which consent shall not be unreasonably withheld, conditioned or delayed. The Corporation may not settle or compromise any Proceeding without the prior written consent of Indemnitee.

Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a) hereof, if any determination by the Corporation is required by applicable law with respect to Indemnitee's entitlement thereto, such determination shall be made (i) if Indemnitee shall request such determination be made by Independent Counsel, by Independent Counsel, and (ii) in all other circumstances, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (D) if so directed by the Board, by the stockholders of the Corporation; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Corporation hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Corporation will not deny any written request for indemnification hereunder made in good faith by Indemnitee unless a determination as to Indemnitee's entitlement to such indemnification described in this Section 10(a) has been made. The Corporation agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Liabilities and Expenses arising out of or relating to this Agreement or its engagement pursuant hereto.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a) hereof, (i) the Independent Counsel shall be selected by the Corporation within ten (10) days of the Submission Date (the cost of such Independent Counsel to be paid by the Corporation), (ii) the Corporation shall give written notice to Indemnitee advising it of the identity of the Independent Counsel so selected and (iii) Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Corporation Indemnitee's written objection to such selection. Such objection by Indemnitee may be asserted only on the ground that the Independent Counsel selected does not meet the requirements of "Independent Counsel" as defined in this Agreement. If such written objection is made and substantiated, the Independent Counsel selected shall not serve as Independent Counsel unless and until Indemnitee withdraws the objection or a court has determined that such objection is without merit. Absent a timely objection, the person so selected shall act as Independent Counsel. If no Independent Counsel shall have been selected and not objected to before the later of (i) thirty (30) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof (the "Submission Date") and (ii) ten (10) days after the final disposition of the Proceeding, each of the Corporation and Indemnitee shall select a law firm or member of a law firm meeting the qualifications to serve as Independent Counsel, and such law firms or members of law firms shall select the Independent Counsel. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by applicable law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Corporation shall, to the fullest extent not prohibited by applicable law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Corporation (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 12(e) hereof, if the person, persons or entity empowered or selected under Section 10 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefore, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by applicable law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent a prohibition of such indemnification under applicable law; *provided, however*, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if (i) the determination is to be made by Independent Counsel and Indemnitee objects to the Corporation's selection of Independent Counsel and (ii) the Independent Counsel ultimately selected requires such additional time for the obtaining or evaluating of documentation or information relating thereto; *provided further, however*, that such 60-day period may also be extended for a reasonable time, not to exceed an additional sixty (60) days, if the determination of entitlement to indemnification is to be made by the stockholders of the Corporation.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 11(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(e) hereof, in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within ninety (90) days after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Sections 4 or 5 or the last sentence of Section 10(a) of this Agreement within ten (10) days after receipt by the Corporation of a written request therefor, (v) payment of indemnification pursuant to Sections 2, 3 or 6 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Corporation or any other Person takes or threatens to take any action to declare this Agreement void or

unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Corporation shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12 the Corporation shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent a prohibition of such indemnification under applicable law.

(d) The Corporation shall, to the fullest extent not prohibited by applicable law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Agreement. It is the intent of the Corporation that Indemnitee not be required to incur Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to Indemnitee hereunder. The Corporation shall indemnify Indemnitee against any and all such Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Corporation of a written request therefore) advance, to the extent not prohibited by applicable law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Corporation under this Agreement or under any directors' and officers' liability insurance policies maintained by the Corporation, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding; *provided* that, in absence of any such determination with respect to such Proceeding, the Corporation shall advance Expenses with respect to such Proceeding.

Section 13. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy 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 prevent the concurrent assertion or employment of any other right or remedy.

(b) The Corporation hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement and insurance provided by one or more Persons with whom or which Indemnitee may be associated. The Corporation hereby acknowledges and agrees that (i) the Corporation shall be the indemnitor of first resort with

respect to any Proceeding, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Corporation shall be primarily liable for all Indemnity Obligations and any indemnification afforded to Indemnatee in respect of any Proceeding, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by applicable law, organizational or constituent documents, contract (including this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which Indemnatee may be associated to indemnify Indemnatee or advance Expenses or Liabilities to Indemnatee in respect of any Proceeding shall be secondary to the obligations of the Corporation hereunder, (iv) the Corporation shall be required to indemnify Indemnatee and advance Expenses or Liabilities to Indemnatee hereunder to the fullest extent provided herein without regard to any rights Indemnatee may have against any other Person with whom or which Indemnatee may be associated or insurer of any such Person and (v) the Corporation irrevocably waives, relinquishes and releases any other Person with whom or which Indemnatee may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Corporation hereunder. In the event any other Person with whom or which Indemnatee may be associated or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Corporation or payable under any Corporation insurance policy, the payor shall have a right of subrogation against the Corporation or its insurer or insurers for all amounts so paid which would otherwise be payable by the Corporation or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation by any other Person with whom or which Indemnatee may be associated or their insurers affect the obligations of the Corporation hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which Indemnatee may be associated. Any indemnification, insurance or advancement provided by any other Person with whom or which Indemnatee may be associated with respect to any Liability arising as a result of Indemnatee's Corporate Status or capacity as an officer or director of any Person is specifically in excess over any Indemnity Obligation of the Corporation or any collectible insurance (including but not limited to any malpractice insurance or professional errors and omissions insurance) provided by the Corporation under this Agreement.

(c) To the extent that the Corporation maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Corporation or of any other Enterprise, Indemnatee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies and such policies shall provide for and recognize that the insurance policies are primary to any rights to indemnification, advancement or insurance proceeds to which Indemnatee may be entitled from one or more Persons with whom or which Indemnatee may be associated to the same extent as the Corporation's indemnification and advancement obligations set forth in this Agreement. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Corporation shall not be subrogated to the rights of recovery of Indemnatee, including rights of indemnification provided to Indemnatee from any other person or entity with whom Indemnatee may be associated; *provided*, *however*, that the Corporation shall be subrogated to the extent of any such payment of all rights of recovery of Indemnatee under insurance policies of the Corporation or any of its subsidiaries.

(e) The indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnatee.

Section 14. Duration of Agreement; Not Employment Contract. This Agreement shall continue until and terminate upon the latest of: (i) ten (10) years after the date that Indemnatee shall have ceased to serve as a director, officer, employee or agent of the Corporation or any other Enterprise and (ii) the date of final termination of any Proceeding then pending in respect of which Indemnatee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnatee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of Indemnatee and Indemnatee's heirs, executors and administrators. This Agreement shall not be deemed an employment contract between the Corporation (or any of its subsidiaries or any other Enterprise) and Indemnatee. Indemnatee specifically acknowledges that Indemnatee's employment with the Corporation (or any of its subsidiaries

or any other Enterprise), if any, is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Corporation (or any of its subsidiaries or any other Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director of the Corporation, by the Certificate of Incorporation, the Bylaws or the DGCL.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by applicable law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer, employee or agent of the Corporation, and the Corporation acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Corporation.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws and applicable law, and shall not be deemed a substitute therefore, nor diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

Section 18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Corporation.

(b) If to the Corporation to:

Spark Energy, Inc.
2105 CityWest Blvd., Suite 100
Houston, Texas 77042
Attention: Board of Directors

or to any other address as may have been furnished to Indemnitee by the Corporation.

Section 19. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Corporation, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for Liabilities or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Corporation and Indemnitee as a result of the event(s) and transaction(s) giving cause to such Proceeding; and (ii) the relative fault of the Corporation (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and transaction(s).

Section 20. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Corporation and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 22. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SPARK ENERGY, INC.

By: /s/ Gil Melman
Name: Gil Melman
Title: Vice President, General Counsel and Corporate Secretary

INDEMNITEE

By: /s/ Kenneth M. Hartwick
Name: Kenneth M. Hartwick
Title: Director

Signature Page to Indemnification Agreement