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Karen A. Yarbrough  
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**WHEN RECORDED OR FILED, PLEASE MAIL TO:**  
Vinson & Elkins LLP  
1001 Fannin, Suite 2500  
Houston, Texas 77002  
Attn: E. Scot Dixon

**THIS DOCUMENT PREPARED BY:**  
E. Scot Dixon  
Vinson & Elkins LLP  
1001 Fannin, Suite 2500  
Houston, Texas 77002

AMENDED AND RESTATED DEED OF TRUST (for California, Missouri, Montana, Nebraska, Nevada, New Mexico, Tennessee, Texas, Utah and Washington), CREDIT LINE DEED OF TRUST (Virginia), MORTGAGE (for Arkansas, Colorado, Idaho, Illinois, Indiana, Kansas, Michigan, New Jersey, and Oklahoma) OPEN END MORTGAGE (for Ohio and Pennsylvania), DEED TO SECURE DEBT (Georgia), ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FROM:

2082

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**BKEP CRUDE, L.L.C.** (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company, Tax ID No.: 20-8536913, Organizational I.D. No. 4308197,

**BKEP MATERIALS, L.L.C.** (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company, Tax ID No.: 26-1600597, Organizational I.D. No. 801211423,

**BKEP ASPHALT, L.L.C.** (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company, Tax ID No.: 27-0254808, Organizational I.D. No. 801105037,

**BKEP PIPELINE, L.L.C.**, (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company, Tax ID No. 20-8682120, Organizational ID No. 4316627,

**BKEP FIELD SERVICES, L.L.C.**, a Delaware limited liability company, Tax ID No. 27-3734226, Organizational ID No. 4887320

AND

**BKEP SERVICES LLC**, (formerly known as BKEP Field Services II, L.L.C.), a Texas limited liability company, Tax ID No. 27-4058173, Organizational ID No. 801344715

COLLECTIVELY, AS "MORTGAGOR",  
TO

DAVID C. BROOKS, as CALIFORNIA, NEW MEXICO, TEXAS, AND VIRGINIA TRUSTEE,

AMY S. RUBIN, as MISSOURI TRUSTEE

FMT OF BILLINGS, LLC, AS MONTANA TRUSTEE,

CHICAGO TITLE INSURANCE COMPANY, as NEBRASKA TRUSTEE,

IRENE KANE, as NEVADA TRUSTEE

JOSEPH B. PITT, JR., as TENNESSEE TRUSTEE,

METRO NATIONAL TITLE, as UTAH TRUSTEE, and

INLAND PROFESSIONAL TITLE, LLC, as WASHINGTON TRUSTEE

In each case, for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, for the benefit of the Secured Parties,

AND

**WELLS FARGO BANK, NATIONAL ASSOCIATION, AS ADMINISTRATIVE AGENT,  
Mortgagee**

**Effective as of June 28, 2013**

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**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

THIS MORTGAGE IS GIVEN IN CONNECTION WITH OTHER MORTGAGES THAT COVER PROPERTY LOCATED IN THE STATE OF OKLAHOMA, AS WELL AS OUTSIDE THE STATE OF OKLAHOMA, AND THE PROPERTY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO IS LIMITED TO THE PROPERTY LOCATED IN THE COUNTY IN WHICH THIS MORTGAGE IS RECORDED.

EXCEPT AS OTHERWISE PROVIDED BY LAW, A CARBON, PHOTOGRAPHIC, FACSIMILE, OR OTHER REPRODUCTION OF THIS INSTRUMENT IS SUFFICIENT AS A FINANCING STATEMENT.

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS, SECURES PAYMENT OF FUTURE ADVANCES, AND COVERS PROCEEDS OF COLLATERAL AND ALSO CONSTITUTES A FINANCING STATEMENT UNDER THE UNIFORM COMMERCIAL CODE.

NOTICE – THIS INSTRUMENT SECURES AN OBLIGATION THAT MAY INCREASE OR DECREASE FROM TIME TO TIME. THIS IS A CREDIT LINE DEED OF TRUST.

THIS INSTRUMENT SECURES AN OBLIGATION THAT MAY INCREASE OR DECREASE FROM TIME TO TIME. THIS INSTRUMENT, WHICH COVERS, AMONG OTHER THINGS, GOODS WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE REAL/IMMOVABLE PROPERTY DESCRIBED HEREIN, IS TO BE FILED FOR RECORD, AMONG OTHER PLACES, IN THE REAL ESTATE OR COMPARABLE RECORDS OF THE COUNTIES (OR CITIES IN THE CASE OF ST. LOUIS, MISSOURI AND NEWPORT NEWS, VIRGINIA) REFERENCED IN EXHIBIT "A" HERETO AND SUCH FILING SHALL SERVE, AMONG OTHER PURPOSES, AS A FIXTURE FILING. THE MORTGAGOR HAS AN INTEREST OF RECORD IN THE REAL ESTATE AND IMMOVABLE PROPERTY CONCERNED, WHICH INTEREST IS DESCRIBED IN SECTION 1.1 OF THIS INSTRUMENT.

**A POWER OF SALE HAS BEEN GRANTED IN THIS MORTGAGE (AS DEFINED HEREIN). IN CERTAIN JURISDICTIONS WHERE THIS INSTRUMENT MAY BE FILED, A POWER OF SALE MAY ALLOW ADMINISTRATIVE AGENT (AS HEREINAFTER DEFINED) OR THE TRUSTEE (AS HEREINAFTER DEFINED) TO TAKE THE MORTGAGED PROPERTIES (AS HEREINAFTER DEFINED) AND SELL THEM (OR TO CAUSE THE MORTGAGED PROPERTIES TO BE SOLD) WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY THE MORTGAGOR (AS SUCH TERMS DEFAULT AND MORTGAGOR ARE HEREINAFTER DEFINED) UNDER THIS MORTGAGE.**

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**FOR OHIO PURPOSES ONLY: THIS IS AN OPEN END MORTGAGE AS ANTICIPATED BY THE OHIO REVISED CODE SECTION 5301.232. THIS INSTRUMENT SECURES AN OBLIGATION THAT MAY INCREASE OR DECREASE FROM TIME TO TIME.**

**THIS IS A CREDIT LINE DEED OF TRUST**

**THE TOTAL AMOUNT SECURED BY THIS MORTGAGE WITH RESPECT TO THE OTHER MORTGAGED PROPERTIES LOCATED IN KANSAS IS LIMITED TO THE PRINCIPAL AMOUNT OF \$11,737,155.00 PLUS INTEREST AND ALL COSTS AND EXPENSES, AS MORE PARTICULARLY SET FORTH IN THIS MORTGAGE.**

**THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS \$5,460,869.00, ALLOCATED AS FOLLOWS: (i) 1,009,659.00 PARSONS TERMINAL (DECATUR COUNTY); (ii) \$429,909.00 MEMPHIS EM MARATHON TERMINAL (SHELBY COUNTY); and (iii) \$4,021,301.00 MEMPHIS TERMINAL (SHELBY COUNTY). THIS MORTGAGE SECURES OBLIGATORY ADVANCES AND IS FOR COMMERCIAL PURPOSES.**

**THE TOTAL AMOUNT SECURED BY THIS MORTGAGE WITH RESPECT TO THE DEED OF TRUST MORTGAGED PROPERTIES LOCATED IN VIRGINIA IS LIMITED TO THE PRINCIPAL AMOUNT OF \$8,792,406.00 PLUS INTEREST AND ALL COSTS AND EXPENSES, AS MORE PARTICULARLY SET FORTH IN THIS MORTGAGE.**

**CERTIFICATION IN ACCORDANCE WITH VIRGINIA CODE § 58.1-803.C: THIS INSTRUMENT MODIFIES THE TERMS OF AN EXISTING DEBT WITH THE SAME LENDER SECURED BY A DEED OF TRUST FOR WHICH RECORDATION TAX HAS BEEN PAID BASED ON A SECURED INDEBTEDNESS OF \$8,792,406.00. THE AMOUNT OF INDEBTEDNESS SECURED REMAINS UNCHANGED.**

**THIS INSTRUMENT CONTAINS INDEMNIFICATION PROVISIONS AND PROVISIONS LIMITING SECURED PARTY'S LIABILITY FOR NEGLIGENCE**

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**AMENDED AND RESTATED DEED OF TRUST (for California, Missouri, Montana, Nebraska, Nevada, New Mexico, Tennessee, Texas, Utah, and Washington), CREDIT LINE DEED OF TRUST (Virginia), MORTGAGE (for Arkansas, Colorado, Idaho, Illinois, Indiana, Kansas, Michigan, New Jersey, and Oklahoma) OPEN END MORTGAGE (for Ohio and Pennsylvania), DEED TO SECURE DEBT (Georgia), ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT  
(this "Mortgage")**

## RECITALS

WHEREAS, Blueknight Energy Partners, L.P., a Delaware limited partnership ("**Borrower**"), has entered into that certain Credit Agreement dated as of October 25, 2010, among Borrower, JPMorgan Chase Bank, N.A., as administrative agent ("**Prior Administrative Agent**"), and the other agents and existing lenders party thereto (as amended prior to the date hereof, the "**Existing Credit Agreement**"), pursuant to which the lenders party thereto severally agreed to make extensions of credit to Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, the obligations of the Loan Parties under the Existing Credit Agreement are secured by, among other things, that certain Deed of Trust (for California, Missouri, Montana, Nebraska, Nevada, New Mexico, Tennessee, Texas, Utah, and Washington), Credit Line Deed of Trust (Virginia), Mortgage (for Arkansas, Colorado, Idaho, Illinois, Indiana, Kansas, Michigan, New Jersey, and Oklahoma), Open End Mortgage (for Ohio and Pennsylvania), Deed to Secure Debt (Georgia), Assignment of Leases and Rents, Security Agreement, Fixture Filing and Financing Statement, dated of even date with the Existing Credit Agreement (as amended, supplemented or otherwise modified prior to the date hereof, the "**Existing Mortgage**"), filed for record in the real property records of the respective jurisdictions in which the property described therein is situated, which Existing Mortgage granted certain liens and security interests in such property to or for the benefit of Prior Administrative Agent;

WHEREAS, Borrower has entered into that certain Amended and Restated Credit Agreement, dated as of even date with the effective date of this Mortgage (the "**Amended and Restated Credit Agreement**"), among Borrower, Wells Fargo Bank, National Association, as administrative agent (in such capacity, together with its successors and assigns in such capacity, "**Administrative Agent**"), and the other agents and Lenders from time to time party thereto, pursuant to which the Existing Credit Agreement was amended and restated in its entirety (the Existing Credit Agreement as so amended and restated by the Amended and Restated Credit Agreement, and as the same may be further amended, restated, renewed, replaced, supplemented, consolidated, extended or increased in amount or otherwise modified from time to time, the "**Credit Agreement**");

WHEREAS, in connection with the Amended and Restated Credit Agreement, the liens and security interests created or evidenced by the Existing Mortgage have been assigned and transferred by Prior Administrative Agent to Administrative Agent pursuant to that certain Master Assignment of Mortgages and Deeds of Trust and Assumption Agreement, dated of even



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date with the effective date of this Mortgage, which has been filed for record in the real property records of the respective jurisdictions in which the Existing Mortgage has been filed for record;

WHEREAS, Borrower is a member of an affiliated group of companies that includes Mortgagor;

WHEREAS, Borrower and the Mortgagor are engaged in related businesses, and Mortgagor will derive substantial direct and indirect benefit from the making of the extensions of credit under the Credit Agreement;

WHEREAS, Mortgagor has entered into that certain Amended and Restated Guarantee and Collateral Agreement dated as of even date with the effective date of this Mortgage, made by Borrower, Mortgagor and certain Subsidiaries of Borrower in favor of Administrative Agent (as further amended, supplemented, restated or otherwise modified from time to time, the "Guarantee and Collateral Agreement"); and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to Borrower under the Credit Agreement that Mortgagor shall have executed and delivered this Mortgage to the Administrative Agent for the ratable benefit of the Secured Parties;

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to Borrower thereunder, Mortgagor hereby agrees as follows:

## ARTICLE I

### Granting Clauses; Secured Indebtedness

Section 1.1. Grant and Mortgage. The parties listed on the cover page hereof constituting Mortgagor (herein individually and collectively called "**Mortgagor**"), whose mailing address is provided on the signature page hereto, for and in consideration of the sum of Ten Dollars (\$10.00) to Mortgagor in hand paid, and in order to secure the payment of the secured indebtedness hereinafter described and the performance of the obligations, covenants, agreements, warranties and undertakings of Mortgagor hereinafter described, does hereby: (a) with respect to those of the following described properties, rights, and interests which are located in (or cover properties located in) the States of **California, New Mexico, Texas, and Virginia** GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN AND SET OVER to DAVID C. BROOKS (together with any successors and substitutes hereunder, the "**Multistate Trustee**"), in trust for the benefit of and security of the Administrative Agent (as hereinafter defined) and the Secured Parties; (b) with respect to those of the following described properties, rights, and interests which are located in (or cover properties located in) the State of **Missouri** GRANT, BARGAIN, SELL, CONVEY, CONFIRM, TRANSFER, ASSIGN AND SET OVER to AMY S. RUBIN (together with any successors and substitutes hereunder, the "**Missouri Trustee**"), in trust for the benefit of and security of the Administrative Agent and the Secured Parties; (c) with respect to those of the following described properties, rights, and interests which

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are located in (or cover properties located in) the State of **Montana** GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN AND SET OVER to FMT OF BILLINGS, LLC (together with any successors and substitutes hereunder, the "**Montana Trustee**"), in trust for the benefit of and security of the Administrative Agent and the Secured Parties; (d) with respect to those of the following described properties, rights, and interests which are located in (or cover properties located in) the State of **Nebraska** GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN AND SET OVER to CHICAGO TITLE INSURANCE COMPANY (together with any successors and substitutes hereunder, "**Nebraska Trustee**"), in trust for the benefit of and security of the Administrative Agent and the Secured Parties; (e) with respect to those of the following described properties, rights, and interests which are located in (or cover properties located in) the State of Nevada GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN AND SET OVER to Irene Kane (together with any successors and substitutes hereunder, "**Nevada Trustee**"); (f) with respect to those of the following described properties, rights, and interests which are located in (or cover properties located in) the State of **Tennessee** GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN AND SET OVER to JOSEPH B. PITT, JR. (together with any successors and substitutes hereunder, the "**Tennessee Trustee**") in trust for the benefit of and security of the Administrative Agent and the Secured Parties; (g) with respect to those of the following described properties, rights, and interests which are located in (or cover properties located in) the State of **Utah** CONVEY AND WARRANT to METRO NATIONAL TITLE (together with any successors and substitutes hereunder, the "**Utah Trustee**") in trust for the benefit of and security of the Administrative Agent and the Secured Parties; (h) with respect to those of the following described properties, rights, and interests which are located in (or cover properties located in) the State of **Washington** GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN AND SET OVER to INLAND PROFESSIONAL TITLE, LLC, in trust for the benefit of and security of the Administrative Agent (together with any successors and substitutes hereunder, the "**Washington Trustee**") in trust for the benefit of and security of the Administrative Agent and the Secured Parties (collectively, the Multistate Trustee, the Missouri Trustee, the Montana Trustee, the Nebraska Trustee, the Nevada Trustee, the Tennessee Trustee, the Utah Trustee, and the Washington Trustee are herein called, "**Trustee**," the address of each Trustee being set forth on the signature page hereto) (all such properties, rights, and interests which are located in (or cover properties located in) the States of **California, Missouri, Montana, Nebraska, Nevada, New Mexico, Texas, Tennessee, Utah, Virginia** and **Washington** are herein called the "**Deed of Trust Mortgaged Properties**"); (i) grant to Trustee a POWER OF SALE (pursuant to this Mortgage and as allowed by any applicable Requirement of Law) with respect to the Deed of Trust Mortgaged Properties; (j) MORTGAGE AND WARRANT, ASSIGN, PLEDGE, HYPOTHECATE, GRANT, BARGAIN, SELL, CONVEY AND CONFIRM to Wells Fargo Bank, National Association, as the Administrative Agent ("**Administrative Agent**") and the Secured Parties, and grant to Administrative Agent a POWER OF SALE (pursuant to this Mortgage and to the extent allowed by any applicable Requirement of Law) with respect to, all of the following described rights, interests and properties which are located in (or cover properties located in) the States of **Arkansas, Colorado, Idaho, Illinois, Indiana, Kansas, Michigan, New Jersey, Ohio, Pennsylvania** and **Oklahoma** (the "**Other Mortgaged Properties**"); and (k) GRANT, BARGAIN, SELL and CONVEY to the Administrative Agent all of the following described rights, interests and properties which are located in (or cover properties located in) the State of Georgia (the "**Georgia Secured Property**");

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(a) Those certain tracts of land, described in Exhibit "A" attached hereto and made a part hereof and Mortgagor's leasehold estate in and to those certain surface leases and other interests in land (the "**Surface Leases**") described in Exhibit "A" attached hereto and made a part hereof (such tracts of land and the lands covered by the Surface Leases being herein collectively called the "**Facility Sites**"), together with all water, water rights, ditch rights and the permits and other evidence of authority or approval to appropriate and/or use ground or surface water in connection with such land or the Facilities and all tanks, tank batteries, injector stations, terminals, pumps, pipelines, plants, heaters, compressors, equipment and other fixtures, personal/movable property, buildings and other improvements now or hereafter located on the Facility Sites, and all building materials, building equipment and fixtures of every kind and nature located on the Facility Sites, or attached to, contained in or used in any such buildings and other improvements, and all appurtenances and additions thereto and betterments, substitutions and replacements thereof (whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise) located on or under the Facility Sites (the "**Facility Property**") or used, held for use in connection with, or in any way related to the Pipeline Systems (as hereinafter defined) (the Facility Sites and the Facility Property are herein sometimes collectively called the "**Facilities**");

(b) All interests, estates or other claims, both in law and in equity, that the Mortgagor now has or may hereafter acquire in (a) the Facilities, (b) all easements, rights-of-way and rights used in connection therewith or as a means of access thereto and (c) all tenements, hereditaments and appurtenances in any manner belonging, relating or appertaining thereto (Mortgagor's interest in all of the foregoing interests, estates and other claims being hereinafter collectively called "**Easements and Rights of Way**");

(c) All estate, right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any streets, open or proposed, adjoining the Facilities, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection therewith (Mortgagor's interest in all of the foregoing estate, right, title and interest being hereinafter called "**Adjacent Rights**");

(d) The rights, interests and estates created under those certain servitudes, easements, rights of way, privileges, franchises, prescriptions, licenses, leases, permits and/or other rights described in Exhibit "A", attached hereto and made a part hereof, and all of Mortgagor's right, title and interest (whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise) in any servitudes, easements, rights of way, privileges, franchises, prescriptions, licenses, leases, permits and/or other rights in and to any land, in any city, county, parish and sections shown on Exhibit "A" even though they may be incorrectly described in or omitted from such Exhibit "A" together with any amendments, renewals, extensions, supplements, modifications or other agreements related to the foregoing, and further together with any other servitudes, easements, rights of way, privileges, prescriptions, franchises, licenses, permits and/or other rights (whether presently existing or hereafter created and whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise) used, held for use in connection with, or in any way related to the Pipeline Systems, the Facilities, and/or pipelines transporting hydrocarbons or other goods, including crude oil, natural gas, natural gas liquids condensate, refined products or asphalt (collectively "**Products**") to, from or



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between Pipeline Systems and/or the Facilities (the rights, interests and estates described in this subsection (d) are herein collectively called the “**Servitudes**”);

(e) Without limitation of the foregoing, all other right, title and interest of Mortgagor of whatever kind or character (whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise) in and to (i) the Facilities, the Surface Leases, the Easements and Rights of Way, the Adjacent Rights, and/or the Servitudes, and (ii) the lands described or referred to in Exhibit “A” (or described in any of the instruments described or referred to in Exhibit “A”);

(f) Without limitation of the foregoing, all of Mortgagor’s right, title and interest (whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise) in and to all transportation, gathering and transmission systems located on the properties described and/or depicted on Exhibit “A”, including, without limitation, any transportation, gathering or transmission systems located in any city, county, parish, or section shown on the foregoing referenced Exhibit “A”; any leases of transportation, gathering and transmission systems, pipes or facilities described on Exhibit “A” and all pipes, valves, gauges, meters and other measuring equipment, regulators, heaters, extractors, tubing, pipelines, fuel lines, facilities, improvements, fittings, materials and other improvements, fixtures, equipment and/or personal/movable property (whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise), including, without limitation, those located on or under the Servitudes, the Facilities, and/or in or on or otherwise related to the transportation, gathering and transmission systems described and/or depicted on Exhibit “A” (the properties, rights and interests described in this subsection (f) are herein collectively called the “**Pipeline Systems**”);

(g) All of Mortgagor’s right, title and interest (whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise) in and to all improvements, fixtures, and other real/immovable and/or personal/movable property (including, without limitation, all equipment, tanks, pipelines, flow lines, gathering lines, compressors, dehydration units, separators, meters, metering stations, buildings, fittings, pipe, pipe connectors, valves, regulators, drips, storage facilities, absorbers, heaters, dehydrators, and power, telephone and telegraph lines) located on or under, or which in any way relate to, the Facilities, the Servitudes, the Easements and Rights of Way, the Adjacent Rights, and/or the Pipeline Systems;

(h) All of Mortgagor’s right, title and interest, whether presently existing or hereafter created or entered into and whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise, in and to:

(i) all purchase, sale, gathering, processing, transportation, storage and other contracts or agreements covering or otherwise relating to the ownership or operation of the Facilities, the Servitudes, and/or the Pipeline Systems, and/or to the purchase, sale or transportation of Products, or to the separation, treatment, stabilization and/or processing of the same;

(ii) all right, title and interest of the Mortgagor in and to any and all leases (in addition to the Surface Leases), contracts and other general intangibles relating to the ownership or operation of the Facilities, the Servitudes, and/or the Pipeline Systems, and

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all reserves, deferred payments, deposits, refunds and claims of every kind, nature or character relating thereto; and

(iii) all rights, privileges and benefits under or arising out of any agreement under which any of the Property, as hereinafter defined, was acquired, including without limitation any and all representations, warranties, or covenants and any and all rights of indemnity or to rebate of the purchase price; all equipment leases, maintenance agreements, electrical supply contracts, option agreements, and other contracts and/or agreements, whether now existing or hereafter entered into, which cover, affect, or otherwise relate to the Facilities, the Servitudes, and/or the Pipeline Systems, and/or any of the Mortgaged Properties (as hereinafter defined) described above, or to the purchase, sale, transportation, gathering, separation, treatment, stabilization, dehydration, processing, delivery and/or redelivery of Products transported, gathered, separated, treated, stabilized, dehydrated, processed, delivered and/or redelivered by or in the Facilities and/or the Pipeline Systems;

(the contractual rights, contracts and other agreements described in this subsection (h) are herein sometimes collectively called the "**Contracts**");

(i) Any and all interests of the Mortgagor, as landlord or lessor, in all leases and subleases of space, tenancies, franchise agreements, licenses, occupancy or concession agreements now existing or hereafter entered into, whether or not of record, relating in any manner to the Facilities, the Surface Leases, the Easements and Rights of Way, the Adjacent Rights, the Servitudes, and/or the Pipeline Systems, and any and all amendments, modifications, supplements, replacements, extensions and renewals of any thereof, whether now in effect or hereafter coming into effect ("**Leases**");

(j) All rents, issues, profits, revenue, income and other benefits derived from the Mortgaged Properties, or arising from the operation thereof or from any of the Leases or Contracts (herein sometimes collectively called the "**Rents**"); and

(k) All rights, estates, powers and privileges appurtenant to the foregoing rights, interests and properties.

TO HAVE AND TO HOLD (a) the Deed of Trust Mortgaged Properties unto the Trustee, and its successors or substitutes in this trust, and to its or their successors and assigns, in trust with power of sale pursuant to this Mortgage and as allowed under any applicable Requirement of Law, however, upon the terms, provisions and conditions herein set forth, (b) the Other Mortgaged Properties unto Administrative Agent, and Administrative Agent's successors and assigns, with power of sale pursuant to this Mortgage and as allowed under applicable any Requirement of Law, however, upon the terms, provisions and conditions herein set forth, and (c) the Georgia Secured Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behalf of Administrative Agent, its successors and assigns, in the case of the Georgia Secured Property, IN FEE SIMPLE forever, and with respect to the Georgia Secured Property, THIS CONVEYANCE is intended to operate and is to be constructed as a deed passing title to the Georgia Secured Property to Administrative Agent and is made under those provisions of the existing laws of the State of Georgia relating to deeds to secure debt, and not as a

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mortgage, and is given to secure the Obligations, in each case of (a), (b), or (c) above, for the benefit of Administrative Agent and the other Secured Parties, upon the terms, provisions and conditions herein set forth (the Deed of Trust Mortgaged Properties, the Other Mortgaged Properties and the Georgia Secured Property are herein sometimes collectively called the “**Mortgaged Properties**”).

Section 1.2. Grant of Security Interest. In order to further secure the payment of the secured indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements, warranties, and undertakings of Mortgagor hereinafter described, Mortgagor hereby grants to Administrative Agent for the benefit of Administrative Agent and the other Secured Parties a security interest in the entire interest of Mortgagor (whether now owned or hereafter acquired by operation of any Requirement of Law or otherwise) in and to:

- (a) the Mortgaged Properties;
- (b) without limitation of any other provision of this Section 1.2, all payments received in lieu of performance which are related to the Mortgaged Properties (regardless of whether such payments or rights thereto accrued, and/or the events which gave rise to such payments occurred, on or before or after the date hereof, including, without limitation, firm or prepaid transportation payments and similar payments, payments received in settlement of or pursuant to a judgment rendered with respect to firm transportation or similar obligations or other obligations under a contract, and payments received in buyout or buydown or other settlement of a contract) and/or imbalances in deliveries (the payments described in this subsection (b) being herein called “**Payments in Lieu**”);
- (c) all equipment, inventory, improvements, fixtures, accessions, goods, including Products owned by Mortgagor, and other personal or movable property of whatever nature (including, but not limited to, that held in connection with the operation of the Mortgaged Properties or the treating, handling, separation, stabilization, storing, processing, heating, transporting, gathering or marketing of Products), and all licenses and permits of whatever nature, including, but not limited to, that now or hereafter used or held for use in connection with the Mortgaged Properties or in connection with the operation thereof or the treating, handling, separation, stabilization, storing, processing, heating, transporting, gathering, or marketing of Products, and all renewals or replacements of the foregoing or substitutions for the foregoing;
- (d) all accounts, receivables, contract rights, choses in action (i.e., rights to enforce contracts or to bring claims thereunder), commercial tort claims and other general intangibles of whatever nature (regardless of whether the same arose and/or the events which gave rise to the same occurred, on or before or after the date hereof, including, but not limited to, that related to the Mortgaged Properties, the operation thereof, or the treating, handling, separation, stabilization, storing, processing, transporting, gathering, or marketing of Products, and including, without limitation, any of the same relating to payment of proceeds thereof or to payment of amounts which could constitute Payments in Lieu);
- (e) without limitation of the generality of the foregoing, any rights and interests of Mortgagor under any present or future hedge or swap agreements, cap, floor, collar, exchange, forward or other hedge or protection agreements or transactions, or any option with respect to

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any such agreement or transaction now existing or hereafter entered into by or on behalf of Mortgagor;

(f) all engineering, accounting, title, legal, and other technical or business data including, but not limited to, that concerning the Mortgaged Properties, the treating, handling, separation, stabilization, storing, processing, transporting, gathering or marketing of Products or any other item of Property (as hereinafter defined) which are now or hereafter in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest, and all books, files, records, magnetic media, software, and other forms of recording or obtaining access to such data;

(g) all money, documents, instruments, chattel paper (including without limitation, electronic chattel paper and tangible chattel paper), rights to payment evidenced by chattel paper, securities, accounts, payable intangibles, general intangibles, letters of credit, letter-of-credit rights, supporting obligations and rights to payment of money arising from or by virtue of any transaction (regardless of whether such transaction occurred on or before or after the date hereof, including, but not limited to, that related to the Mortgaged Properties, the treating, handling, separation, stabilization, storing, processing, transporting, gathering or marketing of the Products or any other item of Property);

(h) all rights, titles and interest now owned or hereafter acquired of Mortgagor in any and all goods, inventory, equipment, documents, money, instruments, intellectual property, certificated securities, uncertificated securities, investment property, letters of credit, rights to proceeds of written letters of credit and other letter-of-credit rights, commercial tort claims, deposit accounts, payment intangibles, general intangibles, contract rights, chattel paper (including, without limitation, electronic chattel paper and tangible chattel paper), rights to payment evidenced by chattel paper, software, supporting obligations and accounts, wherever located, and all rights and privileges with respect thereto (all of the properties, rights and interests described in subsections (a), (b), (c), (d), (e), (f) and (g) above and this subsection (h) being herein sometimes collectively called the "Collateral"); and

(i) all proceeds of the Collateral, whether such proceeds or payments are goods, money, documents, instruments, chattel paper, securities, accounts, payment intangibles, general intangibles, fixtures, real/immovable property, personal/movable property or other assets (the Mortgaged Properties, the Collateral, and the proceeds of the Collateral being herein sometimes collectively called the "Property").

Section 1.3. Note, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of (a) all Obligations, indebtedness and other obligations and liabilities of Borrower, any other Loan Party or other Group Member now or hereafter incurred or arising pursuant to the provisions of the Credit Agreement, the Guarantee and Collateral Agreement and the other Loan Documents, whether now in existence or hereafter arising, whether by acceleration or otherwise, including, without limitation, (i) those certain revolving credit loans in the maximum aggregate stated principal amount of \$400,000,000, which revolving credit loans may be evidenced by notes issued from time to time pursuant to the Credit Agreement, and which revolving credit loans are payable on or before June 28, 2018, unless otherwise extended pursuant to the Credit Agreement, as from time to time amended, supplemented, restated, increased or otherwise modified, and all other notes given in substitution



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therefor, or in modification, renewal or extension thereof, in whole or in part, such revolving credit loans being subject to increase up to an aggregate amount of \$500,000,000 under the terms of the Credit Agreement (as from time to time amended, supplemented, restated, increased or otherwise modified, and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, the "Notes"); (ii) all additional loans or advances made by Administrative Agent or the Lenders to or for the benefit of Borrower or any Subsidiary of Borrower pursuant to the Credit Agreement or any other Loan Document (it being contemplated that the Lenders may lend additional sums to Borrower or any Subsidiary of Borrower pursuant to the Credit Agreement from time to time, but shall not be obligated to do so, and Mortgagor agrees that the payment of any such additional loans shall be secured by this Mortgage), (iii) all interest (including, without limitation, interest accruing at any post-default rate and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), fees, premiums, costs (including costs of collection), expenses, penalties, indemnities, reasonable legal and other fees, and all other reasonable amounts which may now or hereafter be owed to the Administrative Agent, the Issuing Lenders, the Arrangers, or any other Secured Party under or in connection with the Credit Agreement or any of the other Loan Documents, whether or not evidenced by a promissory note or other instrument; (iv) all obligations and liabilities of any nature now or hereafter existing under or arising in connection with the Letters of Credit and Reimbursement Obligations, together with interest and other amounts payable with respect thereto; (v) all other Obligations, indebtedness, obligations and liabilities now or hereafter existing of any kind of any Loan Party or other Group Member to Administrative Agent or any other Secured Parties under documents which recite that they are intended to be secured by this Mortgage; (vi) any sums which may be advanced or paid by Trustee or Administrative Agent or any Secured Party under the terms hereof or of the Credit Agreement or other Loan Documents on account of the failure of Mortgagor or any other Loan Party to comply with the covenants of Mortgagor or other Loan Party contained herein or therein; and (vii) all other Obligations, obligations and liabilities of Mortgagor arising pursuant to the provisions of this Mortgage and the other Loan Documents, including penalties, indemnities, legal and other fees, charges and expenses, and amounts advanced by and expenses incurred in order to preserve any collateral or security interest, whether due after acceleration or otherwise; (b) all Obligations, obligations and liabilities of Borrower, any other Loan Party or any Group Member to the Administrative Agent or any other Secured Party, whether now in existence or hereafter arising, whether by acceleration, termination or otherwise, which may arise under, out of, or in connection with, any Specified Swap Agreement, any Specified Cash Management Agreement or any other document made, delivered or given in connection herewith or therewith, including, without limitation, any amounts payable in respect of a liquidation of, an acceleration of obligations under, or an early termination of, any Specified Swap Agreement, and any unpaid amounts owing in respect thereof; (c) any and all other present or future Obligations; and (d) any and all renewals, modifications, substitutions, rearrangements or extensions of any of the foregoing, whether in whole or in part; provided that, notwithstanding anything to the contrary contained herein, this Mortgage shall not secure any Excluded Swap Obligation.

Section 1.4. Secured Indebtedness. The indebtedness referred to in Section 1.3, and all renewals, extensions and modifications thereof, and all substitutions therefor, in whole or in part, are herein sometimes referred to as the "**secured indebtedness**" or the "**indebtedness secured hereby**." It is contemplated and acknowledged that the secured indebtedness may include

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revolving credit loans and advances from time to time, and that this Mortgage shall have effect, as of the date hereof, to secure all secured indebtedness, regardless of whether any amounts are advanced on the date hereof or on a later date or, whether having been advanced, are later repaid in part or in whole and further advances made at a later date.

## Section 1.5. Certain Defined Terms.

(a) Except as otherwise expressly provided in this Mortgage, all terms in this Mortgage relating to the Collateral and the grant of the foregoing security interest which are defined in the applicable Uniform Commercial Code (the "UCC") shall have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the UCC, as those meanings may be amended, revised or replaced from time to time. Notwithstanding the foregoing, the parties intend that the terms used herein which are defined in the UCC have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the UCC shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the UCC in effect on the date of this Mortgage, then such term, as used herein, shall be given such broadened meaning. If the UCC shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the UCC in effect on the date of this Mortgage, such amendment or holding shall, where legally permitted, be disregarded in defining terms used in this Mortgage.

(b) Unless otherwise defined herein each term defined in the Credit Agreement and used herein has the meaning given to it in the Credit Agreement.

(c) As used in this Mortgage, the following terms have the meanings specified below:

**"Requirement of Law"**: as to any Person any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**"Secured Parties"**: the collective reference to Administrative Agent, the Arranger, the Issuing Lender, the Lenders and any Affiliate of any Lender to which Secured Obligations, secured indebtedness or the indebtedness secured hereby are owed.

**"Specified Cash Management Agreement"**: any agreement providing for treasury, depository, purchasing card or cash management services, including in connection with any automated clearing house transfers of funds or any similar transactions between any Group Member and any Lender or Affiliate thereof (other than any Affiliate Lender or an Affiliate thereof), regardless of when such agreement was entered into.

**"Specified Swap Agreement"**: any Swap Agreement in respect of interest rates, currency exchange rates or commodity prices entered into by the Borrower or any Subsidiary Guarantor and any Person that is a Lender or an Affiliate of a Lender (other than any Affiliate Lender or an Affiliate thereof), regardless of when such Swap Agreement was entered into.

**"Swap Agreement"**: any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to,

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one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Restricted Subsidiaries shall be a "Swap Agreement."

Section 1.6. **INDEBTEDNESS SECURED BY ARKANSAS PROPERTIES.** WITH RESPECT TO PROPERTY LOCATED IN THE STATE OF ARKANSAS, IT IS AGREED THAT THIS MORTGAGE SHALL STAND AS SECURITY FOR THE PAYMENT OF ALL FUTURE AND ADDITIONAL INDEBTEDNESS, DIRECT OR INDIRECT, CREATED AFTER THE DATE OF THIS MORTGAGE, WHICH MAY BE OWING BY ANY LOAN PARTY OR GROUP MEMBER TO ANY SECURED PARTIES AT ANY TIME PRIOR TO THE PAYMENT IN FULL OF ALL OBLIGATIONS, INCLUDING FUTURE ADVANCES SECURED BY THIS MORTGAGE; SUCH FUTURE AND ADDITIONAL INDEBTEDNESS ARE TO BE SECURED HEREBY REGARDLESS OF WHETHER IT SHALL BE PREDICATED UPON FUTURE LOANS OR ADVANCES HEREAFTER MADE BY SECURED PARTIES, OR OBLIGATIONS HEREAFTER ACQUIRED BY SUCH SECURED PARTIES THROUGH ASSIGNMENT OR SUBROGATION OR OTHERWISE, OR SHALL REPRESENT INDIRECT OBLIGATIONS (CREATED AFTER THE DATE OF THIS MORTGAGE) BASED UPON ANY ENDORSEMENTS, GUARANTIES OR SURETYSHIP; AND IT IS AGREED THAT THIS MORTGAGE SHALL STAND AS SECURITY FOR ALL SUCH FUTURE AND ADDITIONAL INDEBTEDNESS WHETHER IT BE INCURRED FOR ANY BUSINESS PURPOSE THAT WAS RELATED OR WHOLLY UNRELATED TO THE PURPOSE OF THE ORIGINAL NOTES, OR WHETHER IT WAS INCURRED FOR SOME PERSONAL OR NONBUSINESS PURPOSE, OR FOR ANY OTHER PURPOSE RELATED OR UNRELATED, OR SIMILAR OR DISSIMILAR, TO THE PURPOSE OF THE ORIGINAL NOTES AND LOANS. UPON REQUEST OF BORROWER, PRIOR TO THE DISCHARGE OF THIS MORTGAGE, SECURED PARTIES, AT THEIR OPTION, MAY MAKE FUTURE ADVANCES TO BORROWER. SUCH FUTURE ADVANCES, WITH INTEREST THEREON, SHALL BE SECURED BY THIS MORTGAGE AND WHEN EVIDENCED BY PROMISSORY NOTES, THE SAID NOTES ARE SECURED HEREBY. NOTHING HEREIN CONTAINED SHALL IMPLY ANY OBLIGATION ON THE PART OF ANY SECURED PARTY TO MAKE ANY SUCH ADDITIONAL LOANS OR ADVANCES.

Section 1.7. **Colorado Future Advances.** THIS INSTRUMENT IS MADE PURSUANT TO A REVOLVING CREDIT ARRANGEMENT. Mortgagor and Administrative Agent agree and acknowledge that Administrative Agent may elect to make additional advances under the terms of the Notes, the Credit Agreement or the other Loan Documents, and that any such future advances shall be subject to, and secured by, this Mortgage. Should the secured indebtedness decrease or increase pursuant to the terms of the Notes, the Credit Agreement or the other Loan Documents, at any time or from time to time, this Mortgage shall retain its priority position of record until (a) the termination of the Credit Agreement, (b) the full, final and complete payment of all the Obligations, and (c) the full release and termination of the liens and security interests created by this Mortgage. The aggregate unpaid

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principal amount of the secured indebtedness outstanding at any particular time which is secured by Property located in Colorado shall not aggregate in excess of \$1,000,000,000. Such amount does not in any way imply that Administrative Agent or the other Secured Parties are obligated to make any future advances to Mortgagor at any time unless specifically so provided in the Credit Agreement or any of the other documents or instruments executed in connection therewith.

Section 1.8. Illinois Future Advances and Maximum Secured Amount. This Mortgage is given to secure not only existing indebtedness, but also future advances under the Notes, the Credit Agreement, or the other Loan Documents, whether such advances are obligatory or are to be made at the option of Administrative Agent, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances were made on the date of the execution of the Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time which is secured by Property located in Illinois shall not exceed \$1,000,000,000, plus interest thereon, and any disbursements made for the payment of taxes, special assessments, or insurance on the property subject to this Mortgage, plus interest thereon. Notwithstanding anything contained herein to the contrary, in no event shall the total amount secured by this Mortgage exceed \$1,000,000,000.

Section 1.9. Indiana Future Advances. As permitted by Ind. Code § 32-29-10, this Mortgage shall secure, in addition to the obligations and liabilities described in Section 1.3 hereof, future advances and obligations of any Loan Party to the Secured Parties and advances by the Secured Parties to any Loan Party, in each case under the Notes, the Credit Agreement, or the other Loan Documents, up to One Billion Dollars (\$1,000,000,000) which is secured by Property located in Indiana (whether made as an obligation, made at the option of Secured Parties, made after a reduction to a zero (0) or other balance or otherwise) to the same extent as if the future advances and obligations were made on the date of this Mortgage.

Section 1.10. Indebtedness Secured by Missouri Properties. This Mortgage secures all future advances and obligations constituting secured indebtedness. The total amount of obligations and advances secured hereby may decrease or increase from time to time, but at no time shall the total principal amount of obligations and advances secured hereby, not including sums expended or incurred for the reasonable protection of the security interest hereby created in the Mortgaged Properties or for other purposes specified in § 443.055(3) of the Missouri Revised Statutes, in each case which is secured by Property located in Missouri, exceed the sum of \$1,000,000,000, which is the face amount of this Mortgage. Nothing contained herein shall create or imply any agreement or commitment by Administrative Agent to loan or advance any sums up to the stated face amount; the agreement of Administrative Agent to make advances is governed by the terms of the Credit Agreement and is subject to all terms, provisions and conditions of the Loan Documents, any Specified Swap Agreement, and any Specified Cash Management Agreement. **(THIS MORTGAGE SECURES, AMONG OTHER THINGS, FUTURE ADVANCES AND FUTURE OBLIGATIONS AND IS TO BE GOVERNED BY THE PROVISIONS OF SECTION 443.055 OF MISSOURI REVISED STATUTES. THE TOTAL PRINCIPAL AMOUNT OF FUTURE ADVANCES AND FUTURE OBLIGATIONS THAT MAY BE SECURED HEREBY, IN EACH CASE WHICH IS SECURED BY PROPERTY LOCATED IN MISSOURI, IS \$1,000,000,000).**



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Section 1.11. Montana Future Advances. Notwithstanding any provision hereof to the contrary, the aggregate unpaid principal amount of the secured indebtedness outstanding at any particular time (after having given effect to all advances and all repayments made prior to such time) which is secured by Property located in Montana shall not in the aggregate exceed One Billion Five Hundred Million Dollars (\$1,500,000,000). Such amount does not in any way imply that Administrative Agent or Secured Parties are obligated to make any future advances to Borrower at any time unless specifically so provided in the Credit Agreement or any of the other Loan Documents.

Section 1.12. Nebraska Maximum Amount. The total principal amount, exclusive of interest, of the secured indebtedness, including any future debts, advances, liabilities or obligations (not including, however, any sums advanced for the protection of the Property) which is secured by Property located in Nebraska shall not exceed One Billion Five Hundred Million Dollars (\$1,500,000,000). Such amount does not in any way imply that Administrative Agent or Lenders are obligated to make any future advances to Borrower at any time unless specifically so provided in the Credit Agreement or any of the other Loan Documents.

Section 1.13. Nevada Future Advances. This Mortgage secures future advances and, to the extent of the Property located in Nevada is governed by the provisions of Nev. Rev. Stat. 106.300-400. The maximum amount of principal to be secured by this Mortgage which is secured by Property located in Nevada is \$1,000,000,000.00.

Section 1.14. New Mexico Maximum Secured Amount. THE MAXIMUM AMOUNT SECURED BY THE LIEN OF THIS MORTGAGE WHICH IS SECURED BY PROPERTY LOCATED IN NEW MEXICO IS TWICE THE FACE AMOUNT OF THE NOTES. The maximum amount secured by the lien of this Mortgage shall not in any way imply that Administrative Agent is obligated to make any future advances to Mortgagor at any time unless specifically so provided in the Loan Documents. The maximum amount secured by the lien of this Mortgage may be advanced and repaid and again advanced from time to time, as provided in the Loan Documents.

Section 1.15. Ohio Open End Mortgage. It is contemplated and acknowledged that this is an open end mortgage, and that the secured indebtedness may include revolving credit loans and advances from time to time, and that this Mortgage shall have effect, as of the date hereof, to secure all secured indebtedness, regardless of whether any amounts are advanced on the date hereof or on a later date or, whether having been advanced, are later repaid in part or in whole and further advances made at a later date.

Section 1.16. Ohio Maximum Amount. This Mortgage is an Open End Mortgage granted pursuant to Ohio Law and in accordance with Ohio Revised Code Section 5301.232. The maximum value of the unpaid balances of such credit loans and advances that, in the aggregate, exclusive of interest, may be outstanding at any time, which is secured by Property located in Ohio, is One Billion Dollars (\$1,000,000,000), plus any additional loan advances made by Administrative Agent or the Secured Parties to protect the Mortgaged Properties, including, but not limited to, advances to pay taxes, assessments, insurance premiums, and all other amounts that Mortgagor has in this Mortgage agreed to pay for the protection of the Mortgaged Properties.

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Section 1.17. Indebtedness Secured by Tennessee Properties. With respect to the property located in the state of Tennessee, this Fee and Leasehold Deed of Trust is made also to secure and enforce payment of all future advances from Administrative Agent and/or Secured Parties to any Loan Party and other future Obligations of any Loan Party to Administrative Agent and/or any Secured Party. THIS FEE AND LEASEHOLD DEED OF TRUST SHALL SECURE ALL FUTURE ADVANCES WHICH MAY BE OBLIGATORY ADVANCES AND IS GIVEN AND INTENDED FOR COMMERCIAL PURPOSES AS SET FORTH FOR PRIORITY PURSUANT TO TENN. CODE ANN. 47-28-104(b). THIS FEE AND LEASEHOLD DEED OF TRUST ALSO SECURES CERTAIN FUTURE ADVANCES WHICH ARE OPTIONAL AND NONOBLIGATORY. Repayment to Administrative Agent and/or Secured Parties Lenders of all of Loan Party's indebtedness shall not terminate the lien of this Fee and Leasehold Deed of Trust unless it is released by the Administrative Agent at the request of the Loan Party; otherwise it shall remain in force to secure any future advances and indebtedness, irrespective of any additional security that may be taken as to such indebtedness. Notwithstanding any provision herein to the contrary, the outstanding indebtedness secured by the Property located in Tennessee and secured by this Mortgage shall not, at any time, exceed an aggregate amount of ~~\$5,460,369.00~~. THIS FEE AND LEASEHOLD DEED OF TRUST COVERS PROPERTY WHICH IS OR MAY BECOME SO AFFIXED TO THE REAL PROPERTY AS TO BECOME FIXTURES AND ALSO CONSTITUTES A FIXTURE FILING UNDER TENN. CODE ANN. 47-9-502

Section 1.18. Credit Line Deed of Trust Notice Address. The name of the noteholder secured and the address at which communications may be mailed or delivered in accordance with Section 55-58.2.5 of the Code of Virginia (1950), as amended, is as follows:

Wells Fargo Bank, National Association,  
as Administrative Agent  
MAC D1109-019  
1525 W W.T. Harris Blvd, 1st Floor  
Charlotte, NC 28262-8522  
Attention: Erika Myers

with a copy to:

Wells Fargo Bank, National Association,  
as Administrative Agent  
MAC T9216-451  
1445 Ross Ave., Suite 4500  
Dallas, TX 75202  
Attention: Jason M. Hicks

Section 1.19. Maturity of Indebtedness. The final maturity of the indebtedness secured hereby, subject to the rights of acceleration, is June 28, 2018.

Section 1.20. Limit on Secured Indebtedness. It is the intention of Mortgagor and Administrative Agent that this Mortgage not constitute a fraudulent transfer or fraudulent conveyance under any state or federal Law that may be applied hereto. Mortgagor and, by its

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acceptance hereof, Administrative Agent hereby acknowledges and agrees that, notwithstanding any other provision of this Mortgage, the amount of indebtedness secured by Mortgagor hereunder shall be limited to the maximum amount of indebtedness that can be secured by Mortgagor hereunder without rendering this Mortgage voidable under any applicable Requirement of Law relating to fraudulent conveyances or fraudulent transfers with respect to Mortgagor.

Section 1.21. Excluded Assets. Notwithstanding any other provision of this Mortgage, this Mortgage shall not, at any time, constitute a grant of a Lien, privilege, security interest or encumbrance in any property that is, at such time, an Excluded Asset (as hereinafter defined), and the terms "Property," "Collateral" and each of the defined terms incorporated therein shall exclude the Excluded Assets. For purposes of this Mortgage, "**Excluded Assets**" shall mean: (a) any permit, lease, license, contract, property right or agreement to which any Mortgagor is a party or any of its rights or interests thereunder if, and only for so long as, the grant of a Lien, privilege, security interest or encumbrance hereunder shall constitute or result in a breach, termination or default under any such permit, lease, license, contract, property right or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable Requirement of Law or principles of equity); provided, however, that such security interest shall attach immediately to any portion of such permit, lease, license, contract, property rights or agreement that does not result in any of the consequences specified above; (b) the Excluded Stock (as hereinafter defined); and (c) all cars, trucks, trailers and other vehicles covered by a certificate of title under the laws of any state to which any Mortgagor has any right, title or interest. For purposes of this Mortgage, "**Excluded Stock**" shall mean: (a) the voting Capital Stock of any Excluded Foreign Subsidiary in excess of 65% of the outstanding voting Capital Stock of such Excluded Foreign Subsidiary; and (b) the Capital Stock of any Unrestricted Subsidiary.

## ARTICLE II

### Representations, Warranties and Covenants

Section 2.1. Mortgagor represents, warrants, and covenants as follows:

(a) Title and Permitted Liens. Mortgagor has, as of the date hereof, good and defensible title to the Property, free and clear of all Liens, privileges, security interests, and encumbrances except for Customary Permitted Liens. From and after the date hereof, Mortgagor covenants to maintain good and defensible title to the Property, free and clear of all Liens, privileges, security interests, and encumbrances except for the Liens permitted by Section 7.3 of the Credit Agreement. Mortgagor will warrant and defend title to the Property, subject as aforesaid, against the claims and demands of all persons claiming or to claim the same or any part thereof. Any and all references made in this Mortgage to the Liens permitted by Section 7.3 of the Credit Agreement are made for the purpose of limiting certain warranties and covenants made by Mortgagor herein and such reference is not intended to affect the description herein of the Mortgaged Properties nor to subordinate the Liens and security interests hereunder to any such Liens.

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(b) Leases and Contracts; Performance of Obligations. Except as otherwise permitted in the Credit Agreement, all material Contracts, Servitudes, Surface Leases, Leases, and other agreements and leases forming a part of the Property are in full force and effect, except to the extent any of the same may terminate due to expiration of the stated terms thereof or where the termination thereof could not reasonably be expected to result in a Material Adverse Effect, and Mortgagor agrees to so maintain them in full force and effect. Except as otherwise permitted in the Credit Agreement, all rents, royalties and other payments due and payable by Mortgagor under the provisions of such Contracts, Servitudes, Surface Leases, Leases and other agreements and leases, or under the Liens permitted under Section 7.3 of the Credit Agreement, or otherwise attendant to the ownership or operation of the Property by Mortgagor, have been, and will continue to be, properly and timely paid. Mortgagor is not in default with respect to Mortgagor's obligations (and Mortgagor is not aware of any default by any third party with respect to such third party's obligations) under such Contracts, Servitudes, Surface Leases, Leases or other agreements or leases, or under the Liens permitted under Section 7.3 of the Credit Agreement, or otherwise attendant to the ownership or operation of any part of the Property, where such default could reasonably be expected to result in a Material Adverse Effect; Mortgagor will fulfill all such obligations coming due in the future, except where such failure to do so could not reasonably be expected to result in a Material Adverse Effect. There are no situations where Mortgagor is aware that a contingent liability may exist which may require Mortgagor to account for such liability on a basis less favorable to Mortgagor than the basis on which Mortgagor is currently accounting.

(c) Contractual Arrangements. Except to the extent that any failure could not reasonably be expected to result in a Material Adverse Effect, Mortgagor will not: (i) permit any of the Facilities or Pipeline Systems to be subject to any contractual or other arrangement for gathering, transporting, storage, treating, processing or other services (A) whereby payment is or can be deferred for a substantial period after the month in which performance occurred or is or can be made other than in cash, (B) which is not on a bona fide arms-length basis and at commercially reasonable prices, on terms which are customary in the industry, or (C) for which prepayments in material amounts have been received, (ii) fail to comply with contractual and other arrangements for gathering, transporting, storage, treating, processing and other services, (iii) permit to exist any imbalances in respect to the Facilities or Pipeline Systems except for those imbalances incurred in the ordinary course of business that are settled in the ordinary course of business, (iv) permit to exist curtailment of (A) services in connection with the Facilities or Pipeline Systems or (B) transportation of its Products other than as required by any applicable Requirement of Law or as a result of events of force majeure, (v) permit any Facilities or Pipeline Systems or any material part thereof to cease to operate (except as a result of customary interruptions in the ordinary course of business or as a result of force majeure events) or to be abandoned, (vi) receive prepayments for services other than prepayments for liabilities for services that will accrue and be settled in the month following the month in which such services were rendered, (vii) permit to exist any contract for gathering, transporting, storage, treating, processing or other services for consideration or other terms in contravention of any applicable Requirement of Law, or (viii) receive consideration other than in accordance with applicable contracts and any applicable Requirement of Law. Mortgagor will use reasonable efforts to cure any events of force majeure. Mortgagor is presently receiving payments and fees for all contractual or other arrangements described above in accordance with the terms of such contract or agreement in all material respects.



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(d) Condition of Personal Property. The equipment, inventory, improvements, fixtures, goods and other tangible personal/movable property forming a part of the Property and used or useful thereto in the conduct of its business are and will remain in good repair and condition (taking into consideration ordinary wear and tear) and are and will be adequate for the normal operation of the Property in accordance with prudent industry standards; all of such Property is, and will remain, located on the Mortgaged Properties, except for that portion thereof which is or shall be located elsewhere (including that usually located on the Mortgaged Properties but temporarily located elsewhere) in the course of the normal operation of the Property and sales and disposals permitted by Section 7.5 of the Credit Agreement.

(e) Operation of Property. The Property is being and, to the extent the same could reasonably be expected to result in a Material Adverse Effect has in the past been, and hereafter will be, maintained and operated in a good and workmanlike manner, in accordance with the standard of care typical in the industry and in conformity in all material respects with all any applicable Requirement of Law and all rules, regulations and orders of all duly constituted authorities having jurisdiction and in conformity with all Contracts, Servitudes and other agreements and leases forming a part of the Property and in conformity with the Liens permitted under Section 7.3 of the Credit Agreement. Mortgagor has, and will have in the future, all governmental licenses and permits necessary or appropriate to own and operate any Property, except where such failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(f) Sale or Disposal. Mortgagor will not, without the prior written consent of Administrative Agent, sell, exchange, lease, transfer, or otherwise dispose of or abandon, any part of, or interest in, the Property other than as permitted by Sections 7.5 of the Credit Agreement.

(g) Environmental.

(i) Current Status. The Property and Mortgagor are not in violation of the representations and warranties contained in Section 4.18 of the Credit Agreement.

(ii) Future Performance. The following definition is applicable for the terms used in this section. "**Applicable Environmental Laws**" shall mean any applicable Requirement of Law, including, without limitation, the common law, pertaining to safety, health or the environment, as such Requirement of Law now exist or are hereafter enacted and/or amended (Applicable Environmental Laws shall include the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended, hereinafter called "**CERCLA**"), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984 (as amended, hereinafter called "**RCRA**") and applicable state and local Law). The terms "**hazardous substance**" and "**release**" as used in this Mortgage shall have the meanings specified in CERCLA, and the terms "**solid waste**" and "**disposal**" (or "**disposed**") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader

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meaning shall apply subsequent to the effective date of such amendment. In the event and to the extent that any Requirement of Law of the states in which the Mortgaged Properties are located establish a meaning for "hazardous substance," "release," "solid waste," or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply. Mortgagor will not cause or permit the Property or Mortgagor to be in violation of, or do anything or permit anything to be done which will subject the Property to any remedial obligations under, or result in noncompliance with applicable permits and licenses under, any Applicable Environmental Laws, assuming disclosure to the applicable Governmental Authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Property except where the same could not reasonably be expected to result in a Material Adverse Effect. Mortgagor will take all steps necessary to determine that no hazardous substances or solid wastes have been disposed of or otherwise released on or onto the Property or any adjacent property from the Property, except where the same could not reasonably be expected to result in a Material Adverse Effect. Mortgagor will not cause or permit the disposal or other release of any hazardous substance or solid waste at, into, upon or under the Property or any adjacent property from the Property and covenants and agrees to keep or cause the Property to be kept free of any hazardous substance or solid waste (except as is required in the ordinary course of business, such use, and temporary storage in anticipation of use in compliance with Applicable Environmental Laws), and to remove the same (or if removal is prohibited by any Requirement of Law, to take whatever action is required by any Requirement of Law) promptly upon discovery except where the same could not reasonably be expected to result in a Material Adverse Effect. Upon Administrative Agent's request during the existence and continuance of a Default, Mortgagor will provide at Mortgagor's sole expense an inspection or audit of the Property from an engineering or consulting firm approved by Administrative Agent, indicating the presence or absence of hazardous substances and solid waste on the Property and compliance with Applicable Environmental Laws and this Section.

(h) Defense of Mortgage. If the validity or priority of this Mortgage or of any rights, titles, Liens, privileges, or security interests created or evidenced hereby with respect to the Property or any part thereof or the title of Mortgagor to the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Mortgagor with respect thereto, Mortgagor will give prompt written notice thereof to Administrative Agent and at Mortgagor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including, but not limited to, the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and Trustee and Administrative Agent, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such additional steps as in their judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Mortgage and the rights, titles, Liens, privileges, and security interests created or evidenced hereby, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Property, the purchase or payment of any tax or tax title and the removal of prior Liens, privileges, or security interests, and all expenditures so made of every kind and

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character shall be a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Administrative Agent or Trustee (as the case may be) and shall bear interest from the date expended until paid at the rate set forth in Section 2.9(c) of the Credit Agreement, and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

(i) Insurance. Mortgagor will carry insurance as provided in the Credit Agreement. All policies evidencing such insurance shall contain clauses providing that the proceeds thereof shall be payable to Administrative Agent as its interest may appear and providing that such policies may not be canceled or reduced or otherwise affected in any materially adverse way without at least thirty (30) days' prior written notice to Administrative Agent; provided that, notwithstanding any such loss payee or mortgagee designation, so long as no Default exists, any payments under such insurance shall be made solely to the Mortgagor for application as required and permitted by Section 2.6 of the Credit Agreement. Upon request by Administrative Agent, Mortgagor shall deliver to Administrative Agent the original policies, evidence of payment of premiums, certificates evidencing renewals, and such other information regarding such insurance as Administrative Agent may reasonably request. In the event of any loss under any insurance policies so carried by Mortgagor, Administrative Agent shall, after it has determined in its sole judgment that Mortgagor has failed to commence or diligently pursue efforts to collect the same, have the right (but not the obligation) to make proof of loss and collect the same, and all amounts so received shall be applied toward costs, charges and expenses (including reasonable attorneys' fees), if any, incurred in the collection thereof, then to the order of Mortgagor for use for repairs and replacement of any loss, unless a Default is then continuing and in which case, then shall be applied to matured secured indebtedness as prescribed by the Credit Agreement, and any excess proceeds shall be paid to the order of Mortgagor for use for repairs and replacement of any loss. In the preceding instances and during the continuance of a Default, Administrative Agent is hereby authorized but not obligated to enforce in its name or in the name of Mortgagor payment of any or all of said policies or settle or compromise any claim in respect thereof, and to collect and make receipts for the proceeds thereof and, in and during such events, Administrative Agent is hereby appointed Mortgagor's agent and attorney-in-fact to endorse any check or draft payable to Mortgagor in order to collect the proceeds of insurance. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Mortgagor in and to such policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or other transferee in the event of such other transfer of title.

Pursuant to Mo. Rev. Stat. § 427.120, Mortgagor acknowledges receipt of the following notice: "Unless you [Mortgagor] provide evidence of the insurance coverage required by your agreement with us [Secured Parties], we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding



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balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.”

(j) Further Assurances. Mortgagor will, on reasonable request of Administrative Agent, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage, or in any other Loan Document, or in the execution or acknowledgment of this Mortgage or any other Loan Document; (ii) promptly execute, acknowledge, deliver and record and/or file such further instruments (including, without limitation, further deeds of trust, mortgages, security agreements, financing statements, continuation statements, and assignments of accounts, funds, contract rights, general intangibles, and proceeds) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents and to more fully identify and subject to the Liens, privileges, and security interests hereof any property intended to be covered hereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; and (iii) promptly execute, acknowledge, deliver, and file and/or record any document or instrument (including specifically any financing statement) desired by Administrative Agent to protect the Lien, privilege, or the security interest hereunder against the rights or interests of third persons. Mortgagor shall pay all costs connected with any of the foregoing.

(k) Name and Place of Business and Formation. Except as disclosed in the Credit Agreement, the other Loan Documents or in the Perfection Certificate delivered by Borrower to Administrative Agent, Mortgagor has not, during the preceding five years, been known by or used any other legal name. Mortgagor will not cause or permit any change to be made in its name, identity or state of formation number unless Mortgagor shall have notified Administrative Agent of such change at least twenty (20) days prior to the effective date of such change (or such shorter period as may be approved by Administrative Agent), and shall have first taken all action required by Administrative Agent for the purpose of further perfecting or protecting the Liens, privileges, and security interests in the Property created hereby. Mortgagor's exact name is the name set forth in this mortgage. Mortgagor's location is as follows:

Mortgagor is a registered organization which is organized under any Requirement of Law of one of the states comprising the United States (e.g. corporation, limited partnership, registered limited liability partnership or limited liability company). Mortgagor is located (as determined pursuant to the UCC) in the state under any Requirement of Law in which it was organized, which is: (1) with respect to **BKEP CRUDE, L.L.C., BKEP PIPELINE, L.L.C., and BKEP FIELD SERVICES, L.L.C.**, Delaware; and (2) with respect to **BKEP MATERIALS, L.L.C., BKEP ASPHALT, L.L.C., and BKEP SERVICES LLC**, Texas. As of the date hereof, Mortgagor's principal place of business and chief executive office is located at the address set forth below the signature of Mortgagor to this Mortgage.

(l) Not a Foreign Person. Mortgagor is not a “foreign person” within the meaning of the Internal Revenue Code of 1986, as amended, (hereinafter called the “Code”), Sections 1445 and 7701 (i.e. Mortgagor is not a non-resident alien, foreign corporation, foreign partnership,



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foreign trust or foreign estate as those terms are defined in the Code and any regulations promulgated thereunder).

(m) Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Notes and secured by this Mortgage which are set forth in any Requirement of Law of any Governmental Authority, and further agrees upon request of Administrative Agent to furnish Administrative Agent with evidence of such compliance.

(n) Surface Leases.

(i) Default; Notice of Default. To the best of Mortgagor's knowledge, as of the date hereof, the lessor under any Surface Lease is not in default in the performance of any of its material obligations under such Surface Lease. As of the date hereof, (A) Mortgagor is not in default in the performance of any of its obligations under any Surface Lease, and (B) there are no circumstances which, alone or with the passage of time or the giving of notice or both, would constitute an event of default thereunder. Mortgagor will give Administrative Agent immediate notice of any notice of default or cancellation given to or received by the Mortgagor under any Surface Lease, subject to any applicable grace periods. Mortgagor will provide Administrative Agent with copies of any such notices of default or other notices.

(ii) Lease Obligations and Rights.

(A) Each of the Surface Leases is and shall be maintained in full force and effect, except to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect or the termination of any Surface Lease results from the expiration of the stated term thereof. Subject to any applicable notice and cure periods in each Surface Lease, Mortgagor will promptly and faithfully observe, perform and comply or cause the observance, performance and compliance with, all the material terms, covenants and provisions of each Surface Lease, on its part to be observed, performed and complied with, at the times set forth therein. Mortgagor will furnish to Administrative Agent such information and evidence as Administrative Agent may reasonably request concerning Mortgagor's due observance, performance and compliance with the terms, covenants and provisions of any Surface Lease.

(B) There are, as of the date hereof, and will be, no defenses to Mortgagor's enforcement of its rights under each Surface Lease that could reasonably be expected to result in a Material Adverse Effect. Subject to any applicable notice and cure periods in each Surface Lease, Mortgagor will enforce the material obligations of the lessor under such Surface Lease, to the end that Mortgagor may enjoy all of the material rights granted it under such Surface Lease.

(iii) Lease Termination. Mortgagor covenants that it will not, without the prior written consent of Administrative Agent, cancel, release, terminate or surrender such

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Surface Lease or the Mortgaged Property demised by such Surface Lease, or waive, excuse, condone or in any way release or discharge the lessor thereunder of and from the obligations, covenants, conditions and agreements by the lessor to be done other than upon termination of the applicable Surface Lease due to expiration of its stated term, and Mortgagor does by these presents expressly release, relinquish and assign unto Administrative Agent all its right, power and authority to so cancel, release, terminate or surrender, in any way the terms and provision of any Surface Lease to be retained by Administrative Agent until this Mortgage has been released. Further, without Administrative Agent's prior written consent, Mortgagor will not, subsequent to the effective date hereof, suffer or permit any subletting or assignment of any of Mortgagor's interest under any Surface Lease.

(iv) No Release. Mortgagor covenants and agrees that no release or forbearance of any of Mortgagor's obligations under any Surface Lease, pursuant to such Surface Lease or otherwise, shall release Mortgagor from any of its obligations under this Mortgage, including its obligation with respect to the payment of rent as provided for in said Surface Lease and the performance of all the terms, provisions, covenants, conditions and agreements contained in such Surface Lease, to be kept, performed and complied with by Mortgagor therein.

(v) After-Acquired Land. In the event Mortgagor were to acquire the remaining interest in the fee simple of any Mortgaged Property demised by any Surface Lease or any greater estate to which any Surface Lease relates, the Lien of this Mortgage shall attach, extend to, cover and constitute a Lien upon such fee simple title or greater estate, and it shall be included within the definition of the Mortgaged Property. Mortgagor agrees to execute all instruments and documents which Administrative Agent may reasonably require to ratify, confirm and further evidence the Lien on such acquired estate, title or interest.

(vi) No Merger Provision. Mortgagor covenants and agrees that unless Administrative Agent shall otherwise expressly consent in writing, title to the Mortgaged Property demised by any Surface Lease and the leasehold estate created by such Surface Lease shall not merge but shall always remain separate and distinct, notwithstanding union of said estates either in the lessor or in the Administrative Agent or subsequent lessee or third party by purchase or otherwise.

(vii) No Liability. Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of any Surface Lease within the meaning of any provision thereof prohibiting its assignment and Administrative Agent shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. Administrative Agent shall be liable for the obligations of Mortgagor arising under any Surface Lease for only that period of time which Administrative Agent is in possession of the Mortgaged Property demised by such Surface Lease or has acquired, by foreclosure or otherwise, and is holding all of Mortgagor's right, title and interest therein.

Section 2.2. Performance on Mortgagor's Behalf. Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which hereunder Mortgagor is required to perform

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or take, or to pay any money which hereunder Mortgagor is required to pay, Administrative Agent, in Mortgagor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Administrative Agent and any money so paid by Administrative Agent shall be a demand obligation owing by Mortgagor to Administrative Agent (which obligation Mortgagor hereby expressly promises to pay) and Administrative Agent, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Further, if Mortgagor shall fail to comply with its covenants under any Surface Lease, or upon receipt by Administrative Agent from the lessor of any such lease of notice of any default under any such Surface Lease, Administrative Agent may rely thereon and take any action necessary to cure such default, even though the existence of such default and the nature thereof be questioned or denied by Mortgagor or by any party on behalf of Mortgagor. Mortgagor hereby expressly grants to Administrative Agent and agrees that Administrative Agent shall have the absolute and immediate right to enter upon the Mortgaged Property subject to such Surface Lease or any part thereof to the extent and as often as Administrative Agent in its sole discretion deems necessary or desirable in order to prevent such default or to cure any such default by Mortgagor. Administrative Agent may pay and expend sums of money as Administrative Agent in its sole discretion deems necessary for such purpose, and any money so paid by Administrative Agent shall be a demand obligation owing by Mortgagor to Administrative Agent (which obligation Mortgagor hereby expressly promises to pay) and Administrative Agent, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Each amount due and owing by Mortgagor to Trustee and/or Administrative Agent pursuant to this Mortgage shall bear interest each day, from the date of such expenditure or payment until paid, at the rate set forth in Section 2.9(c) of the Credit Agreement; all such amounts, together with such interest thereon, shall be a part of the secured indebtedness and shall be secured by this Mortgage.

## ARTICLE III

### Assignment of Rents, Accounts, and Proceeds

Section 3.1. Assignment. Except as set forth in Section 3.2, below, as additional security for the payment and performance in full of the obligations referred to in Section 1.3 hereof, Mortgagor absolutely, presently, unconditionally and irrevocably assigns, transfers and sets over to the Administrative Agent, and grants to the Administrative Agent, all of the Mortgagor's estate, right, title, interest, claim and demand, as landlord or lessor, under any and all of the Leases, and does further hereby absolutely, presently, unconditionally and irrevocably assign, transfer and set over to Administrative Agent all Rents, together with the immediate and continuing right to collect and receive such Rents. Mortgagor directs and instructs any and all payors of Rents to pay to Administrative Agent all of the Rents until such time as such payors have been furnished with evidence that all secured indebtedness has been paid and that this Mortgage has been released. Mortgagor agrees that no payors of Rents shall have any responsibility for the application of any funds paid to Administrative Agent. While the above assignment is an absolute assignment and not an assignment for additional security only, the Administrative Agent hereby grants to the Mortgagor a license to collect and apply the Rents and to enforce the obligations of tenants and other counterparties under the Leases. Immediately

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upon the occurrence of and during the continuance of any Default, whether or not legal proceedings have commenced and without regard to waste, adequacy of security for the Obligations or solvency of the Mortgagor, the license granted in the immediately preceding sentence shall automatically cease and terminate upon the giving of written notice to Mortgagor by the Administrative Agent of such termination.

**Section 3.2. Collateral Assignment of Texas Rents.** As additional security for the payment and performance in full of the obligations referred to in Section 1.3 hereof, Mortgagor hereby collaterally grants, transfers and assigns, in accordance with the TARA (hereinafter defined), to Administrative Agent all of Mortgagor's right, title and interest in and to the Rents attributable to or with respect to, the Property located in the state of Texas. This assignment grants, and is intended to grant to Administrative Agent, a presently effective first priority lien and security interest in such Rents. Upon the occurrence of and during the continuation of a Default, Administrative Agent shall have all the rights and remedies and be entitled to all of the benefits of Section 64.053, Section 64.054, Section 64.055 and Section 64.057 of the TARA. Mortgagor hereby waives any right to withhold any amount permitted by the provisions of Section 64.060(a) of the TARA and, the provisions thereof notwithstanding, agrees that, during the continuation of a Default, Mortgagor shall turn over such Rents within ten (10) days after written notice demanding the turnover of such Rents is received by Mortgagor as provided in Section 5.16 hereof. "TARA" means the Texas Assignment of Rents Act, being Chapter 64 of the Texas Property Code, as in effect from time to time.

**Section 3.3. Effectuating Payment of Rents to Administrative Agent.** Independent of the foregoing provisions and authorities herein granted, Mortgagor agrees to execute and deliver any and all instruments that may be requested by Administrative Agent or that may be required by any payor of Rents for the purpose of effectuating payment of the Rents to Administrative Agent. If under any existing agreements, any Rents are required to be paid by the payor to Mortgagor so that under such existing agreements payment cannot be made of such Rents to Administrative Agent, Mortgagor's interest in all Rents under such agreements and in all other Rents which for any reason may be paid to Mortgagor shall, when received by Mortgagor, after the termination of the Mortgagor's license as described in Section 3.1, above, constitute trust funds in Mortgagor's hands and shall be immediately paid over to Administrative Agent. Without limitation upon any of the foregoing, Mortgagor hereby constitutes and appoints Administrative Agent as Mortgagor's special attorney-in-fact (with full power of substitution, either generally or for such periods or purposes as Administrative Agent may from time to time prescribe) in the name, place and stead of Mortgagor to do any and every act and exercise any and every power that Mortgagor might or could do or exercise personally with respect to all Rents (the same having been assigned by Mortgagor to Administrative Agent pursuant to Section 3.1 hereof). The foregoing appointment includes, without limitation, the right, power and authority, during the continuance of a Default, to:

(a) Execute and deliver in the name of Mortgagor any and all instruments of every nature that may be requested or required by any party for the purposes of effectuating payment of the Rents to Administrative Agent or which Administrative Agent may otherwise deem necessary or appropriate to effect the intent and purposes of the assignment contained in Section 3.1; and



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(b) If under any agreements any Rents are required to be paid by the payor to Mortgagor so that under such existing agreements payment cannot be made of such Rents to Administrative Agent, to make, execute and enter into such agreements as are necessary to direct Rents to be payable to Administrative Agent.

Administrative Agent, as attorney-in-fact, is further hereby given and granted full power and authority to do and perform any and every act and thing whatsoever necessary and requisite to be done as fully and to all intents and purposes, as Mortgagor might or could do if personally present; and Mortgagor shall be bound thereby as fully and effectively as if Mortgagor had personally executed, acknowledged and delivered any of the foregoing certificates or documents. The powers and authorities herein conferred upon Administrative Agent may be exercised by Administrative Agent through any person who, at the time of the execution of the particular instrument, is an officer of Administrative Agent. The power of attorney herein conferred is granted for valuable consideration and hence is coupled with an interest and is irrevocable so long as the secured indebtedness, or any part thereof, shall remain unpaid. All persons dealing with Administrative Agent or any substitute shall be fully protected in treating the powers and authorities conferred by this paragraph as continuing in full force and effect until advised by Administrative Agent that all the secured indebtedness is fully and finally paid. Administrative Agent may, but shall not be obligated to, take such action as it deems appropriate in an effort to collect the Rents, and any reasonable expenses (including reasonable attorney's fees) so incurred by Administrative Agent shall be a demand obligation of Mortgagor and shall be part of the secured indebtedness, and shall bear interest each day, from the date of such expenditure or payment until paid, at the rate set forth in Section 2.9(c) of the Credit Agreement.

Section 3.4. Release From Liability; Indemnification. Administrative Agent and its successors and assigns are hereby released and absolved from all liability for failure to enforce the Leases and/or the collection of the Rents and from all other responsibility in connection therewith, except the responsibility of each to account to Mortgagor for funds actually received by each. Mortgagor agrees to indemnify and hold harmless Administrative Agent (for purposes of this paragraph, the term "Administrative Agent" shall include the directors, officers, partners, employees and agents of Administrative Agent and any persons or entities owned or controlled by or affiliated with Administrative Agent) from and against all claims, demands, liabilities, losses, damages (including without limitation consequential damages), causes of action, judgments, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expenses) imposed upon, asserted against or incurred or paid by Administrative Agent by reason of the assertion that Administrative Agent received, either before or after payment in full of the secured indebtedness, funds claimed by third persons (and/or funds in respect of consideration paid in violation of applicable contracts or any Requirement of Law), and Administrative Agent shall have the right to defend against any such claims or actions, employing attorneys of its own selection. In addition, if not furnished with indemnity satisfactory to it, Administrative Agent shall have the right to compromise and adjust any such claims, actions and judgments, and in addition to the rights to be indemnified as herein provided, all amounts paid by Administrative Agent in compromise, satisfaction or discharge of any such claim, action or judgment, and all court costs, attorneys' fees and other expenses of every character expended by Administrative Agent pursuant to the provisions of this section shall be a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Administrative Agent and shall bear interest, from the date expended until paid, at

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the rate set forth in Section 2.9(c) of the Credit Agreement. The foregoing indemnities shall not terminate upon the Release Date (as hereinafter defined) or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, and the repayment of the secured indebtedness and the discharge and release of this Mortgage and the other documents evidencing and/or securing the secured indebtedness with respect to claims or actions arising out of events that occur prior to the Release Date. The “**Release Date**” as used herein shall mean the earlier of the following two dates: (i) the date on which the indebtedness and other obligations secured hereby have been paid and performed in full (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Specified Cash Management Agreements and Specified Swap Agreements either (x) as to which arrangements satisfactory to the applicable Secured Party shall have been made or (y) notice has not been received by the Administrative Agent from the applicable Secured Party that such amounts are then due and payable)) and this Mortgage has been released of record, or (ii) the date on which the Lien of this Mortgage is foreclosed or a deed in lieu of such foreclosure is fully effective and recorded. **WITHOUT LIMITATION, IT IS THE INTENTION OF MORTGAGOR AND MORTGAGOR AGREES THAT THE FOREGOING RELEASES AND INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES (INCLUDING WITHOUT LIMITATION CONSEQUENTIAL DAMAGES), CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES AND EXPENSES) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY.** However, such indemnities shall not apply to any particular indemnified party (but shall apply to the other indemnified parties) to the extent the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of such particular indemnified party.

Section 3.5. Mortgagor’s Absolute Obligation to Pay Note. Nothing herein contained shall detract from or limit the obligations of Mortgagor to make prompt payment of the Notes, and any and all other secured indebtedness, at the time and in the manner provided herein, in the Loan Documents, any Specified Swap Agreement, and any Specified Cash Management Agreement, regardless of whether the Rents herein assigned are sufficient to pay same, and the rights under this Article III shall be cumulative of all other rights under the Loan Documents, any Specified Swap Agreement, and any Specified Cash Management Agreement.

Section 3.6. Change of Purchaser. To the extent applicable, and if a default has occurred hereunder and is continuing, should any person now or hereafter purchasing or taking production related to any Pipeline System fail to make payment promptly to Administrative Agent of the related production proceeds, Administrative Agent shall, subject to then existing contractual prohibitions, have the right to make, or to require Mortgagor to make, a change of purchaser, and the right to designate or approve the new purchaser, and Administrative Agent shall have no liability or responsibility in connection therewith so long as ordinary care is used in making such designation.

Section 3.7. Rights Under Oklahoma Oil and Gas Owners’ Lien Act. Mortgagor hereby grants, sells, assigns and sets over unto Administrative Agent during the term hereof, all of

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Mortgagor's rights and interests pursuant to the provisions of the Oil and Gas Owners' Lien Act (OKLA. STAT. tit. 52, §§ 548.1-548.6 (the "Oklahoma Act"), hereby vesting in Administrative Agent all of Mortgagor's rights as an interest owner to the continuing security interest in and Lien upon the oil or gas severed or the proceeds of sale. Administrative Agent may, at its option, file the verified notice of Lien in order to perfect such Lien, but shall not be obligated to make such filing and shall not be held liable to Mortgagor for any act or omission pursuant to the Oklahoma Act.

## ARTICLE IV Remedies Upon Default

Section 4.1. Default. The terms "default" and "Default" as used in this Mortgage shall mean the occurrence of an Event of Default. Upon the occurrence of a default, Administrative Agent at any time and from time to time may without notice to Mortgagor or any other person declare any or all of the secured indebtedness immediately due and payable, without relief from valuation and appraisal any Requirement of Law, and all such secured indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, putting the Mortgagor in default, dishonor, notice of dishonor or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor, and the Liens evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by any Requirement of Law as Administrative Agent may elect. With respect to the Deed of Trust Mortgaged Properties which are situated in the Commonwealth of Virginia, the foregoing shall include, but not be limited to, such acceleration as may be made by the Trustee, and this Mortgage is "subject to call upon default", as that term is construed pursuant to Section 55-50(4) of the Code of Virginia (1950) as amended

Section 4.2. Pre-Foreclosure Remedies. Upon the occurrence of a default, Administrative Agent is authorized, prior or subsequent to the institution of any foreclosure proceedings, and to the extent allowed by any applicable Requirement of Law, to enter upon the Property, or any part thereof, and to take possession of the Property and all books and records relating thereto, and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Property. If necessary to obtain the possession provided for above, Administrative Agent may invoke any and all legal remedies to dispossess Mortgagor, including, but not limited to, summary proceeding or restraining order. Mortgagor agrees to peacefully surrender possession of the Property upon default if requested. All costs, expenses and liabilities of every character incurred by Administrative Agent in managing, operating, maintaining, protecting or preserving the Property shall constitute a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Administrative Agent and shall bear interest from date of expenditure until paid at the rate set forth in Section 2.9(c) of the Credit Agreement, all of which shall constitute a portion of the secured indebtedness and shall be secured by this Mortgage and by any other instrument securing the secured indebtedness. In connection with any action taken by Administrative Agent pursuant to this Section 4.2, **ADMINISTRATIVE AGENT SHALL NOT BE LIABLE FOR ANY LOSS SUSTAINED BY MORTGAGOR**

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**RESULTING FROM ANY ACT OR OMISSION OF ADMINISTRATIVE AGENT (INCLUDING ADMINISTRATIVE AGENT'S OWN NEGLIGENCE) IN MANAGING THE PROPERTY UNLESS SUCH LOSS IS CAUSED BY THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR BAD FAITH OF ADMINISTRATIVE AGENT**, nor shall Administrative Agent be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any agreement forming a part of the Property or arising under any Lien permitted under Section 7.3 of the Credit Agreement or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Administrative Agent with respect to the Property taken under this Section 4.2. In addition to the remedies set forth above, Administrative Agent is authorized to enter upon and take possession of any portion of the Property consisting of a leasehold estate or leased premises, and to exercise, without interference from Mortgagor, any and all rights with respect to the leased premises that Administrative Agent has with respect to the Property under this Section, including the right to remedy any default under said Lease and to exercise any other rights it or Mortgagor has under said Lease Agreement as amended

### Section 4.3. Foreclosure

(a) Upon the occurrence of a default, Trustee is authorized and empowered and it shall be Trustee's special duty at the request of Administrative Agent to sell the Deed of Trust Mortgaged Properties, or any part thereof, as an entirety or, to the extent not prohibited by any applicable Requirement of Law, in parcels as Administrative Agent may elect, at such place or places and otherwise in the manner and upon such notice as may be required by any Requirement of Law or, in the absence of any such requirement, as Trustee may deem appropriate. If Trustee shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the conveyance of the property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale. Any sale of the Collateral conducted under this Article IV may be postponed from time to time as provided by any applicable Requirement of Law; or, in the absence of any such provisions, Administrative Agent may postpone the sale of the Collateral or any part thereof by public announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement. Sale of a part of the Collateral will not exhaust the power of sale, and sales may be made from time to time until all Collateral is sold or the Obligations are paid in full. Cumulative of the foregoing and the other provisions of this Section 4.3:

(i) As to the Deed of Trust Mortgaged Properties situated in the State of Texas, such sales of all or any part of such Deed of Trust Mortgaged Properties shall be conducted at the courthouse of any county (whether or not the counties in which such Deed of Trust Mortgaged Properties are located are contiguous) in the State of Texas in which any part of such Deed of Trust Mortgaged Properties is situated, at public vendue to the highest bidder for cash between the hours of ten o'clock a.m. and four o'clock p.m. on the first Tuesday in any month or at such other place, time and date as provided by the statutes of the State of Texas then in force governing sales of real estate under powers conferred by deed of trust, after having given notice of such sale in accordance with such statutes.



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(ii) As to the other Deed of Trust Mortgaged Properties, Trustee may proceed, by power of sale, to sell the Deed of Trust Mortgaged Properties and any and every part thereof, at public venue, to the highest bidder, at the customary place in the county (or the City of St. Louis Missouri as to the Deed of Trust Mortgaged Properties located in the City of St. Louis, Missouri, and the City of Newport News, Virginia, as to the Deed of Trust Mortgaged Properties located in the City of Newport News, Virginia) in which the Deed of Trust Mortgaged Properties are located, for cash, first giving the public notice required by Law of the time, terms and place of sale, and of the property to be sold; and upon such sale shall execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof, and any statement or recital of fact in such deed in relation to the nonpayment of money hereby secured to be paid, existence of the secured indebtedness, notice of advertisement, sale, receipt of money, and the happening of any of the events whereby any successor trustee became successor as herein provided, shall be prima facie evidence of the truth of such statement or recital; and Trustee shall receive the proceeds of such sale, out of which Trustee shall pay: first, the cost and expenses of executing this trust, including attorneys' fees and compensation to Trustee for his services; and next to Administrative Agent or its endorsees or assignees, upon the usual vouchers therefor, all monies paid pursuant to or under any provisions set forth herein, in the Credit Agreement, in any of the other Loan Documents or any Specified Swap Agreement or any Specified Cash Management Agreement; and next to the payment of the secured indebtedness, in such order as Administrative Agent may elect; and the balance of such proceeds, if any, shall be paid to the person or persons legally entitled thereto; and Trustee covenants faithfully to perform the trust herein created. Until a sale shall be held hereunder, Trustee hereby lets the Deed of Trust Mortgaged Properties to Mortgagor, upon the following terms and conditions, to-wit: Mortgagor, and every and all persons claiming or possessing the Deed of Trust Mortgaged Properties, or any part thereof, by, through, or under Mortgagor shall or will pay rent therefor during said term at the rate of one cent per month, payable monthly upon demand and shall and will surrender peaceable possession of the Deed of Trust Mortgaged Properties, and any and every part thereof, to Trustee, its successors, assignees, or purchasers thereof, without notice or demand therefor, upon the occurrence of any Default.

(iii) As to the Mortgaged Properties located in the State of Montana, this Mortgage may be foreclosed by advertisement or sale in the manner provided in the small Tract Financing Act of Montana or by judicial procedure as provided by Montana law for the foreclosure of mortgages on real property.

(iv) As to the Deed of Trust Mortgaged Properties situated in the Commonwealth of Virginia, any sale of the Mortgaged Property shall also be made in accordance with the provisions of Sections 55-59.1, 55-59.2, 55-59.3, 55-59.4 and 55-63 of the Code of Virginia (1950), as amended, or other applicable general local laws of the Commonwealth of Virginia or judicial rules or procedures relating to the foreclosure of deeds of trust. Advertisement Required: once a week for two consecutive weeks.

**A POWER OF SALE HAS BEEN GRANTED IN THIS MORTGAGE. A POWER OF SALE MAY ALLOW ADMINISTRATIVE AGENT OR TRUSTEE TO TAKE THE DEED OF TRUST MORTGAGED PROPERTIES AND SELL THEM**

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## WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY MORTGAGOR UNDER THIS MORTGAGE.

(b) Upon the occurrence of a default, this Mortgage may be foreclosed as to the Other Mortgaged Properties, or any part thereof, by power of sale (if permitted under any applicable Requirement of Law), by judicial action, or in any other manner permitted by any applicable Requirement of Law. Cumulative of the foregoing and the other provisions of this Section 4.3:

(i) As to the Other Mortgaged Properties located in the State of Oklahoma, Mortgagor hereby confers on Administrative Agent the power to sell the Mortgaged Properties in accordance with the Oklahoma Power of Sale Mortgage Foreclosure Act (OKLA. STAT. tit. 46, §§ 41-49), as the same may be amended from time to time. Mortgagor hereby represents and warrants that this Mortgage transaction does not involve a consumer loan as said term is defined in Section 3-104 of Title 14A of the Oklahoma Statutes, that this Mortgage does not secure an extension of credit made primarily for agricultural purposes as defined in paragraph 4 of Section 1-301 of Title 14A of the Oklahoma Statutes, and that this Mortgage is not a mortgage on the Mortgagor's homestead.

(ii) As to Other Mortgaged Properties located in the State of Arkansas, Administrative Agent shall have the power to sell such Other Mortgaged Properties for cash at public sale to the highest bidder 60 days following the recording in the Arkansas counties reflected in Exhibit "A" here of a notice of default and intention to sell and publication of notice in a newspaper in general circulation in said counties for 30 days, once a week for four (4) consecutive weeks prior to the date of sale, with the final publication no more than ten (10) days prior to the sale.

(iii) As to the Other Mortgaged Properties located in the State of Wisconsin, Administrative Agent may, at its option, proceed by suit or suits in equity or at Law to foreclose this Mortgage and Mortgagor agrees to the provisions of § 846.103 Wis. Stats., and as the same may be amended or renumbered from time to time, permitting the Administrative Agent, at the Administrative Agent's option and upon waiving the right to judgment for deficiency, to hold the foreclosure sale of such Other Mortgaged Properties three (3) months after a foreclosure judgment is entered.

(iv) As to the Other Mortgaged Properties located in the State of Illinois: If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as it may from time to time be amended (herein the "**Illinois Act**"), the provisions of the Illinois Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Illinois Act. Without in any way limiting or restricting any of Administrative Agent's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, Administrative Agent shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Illinois Act. If any provision of this Mortgage grants to Administrative Agent any

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rights, remedies, powers or authorities upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Administrative Agent under the Illinois Act in the absence of said provision, Administrative Agent shall be vested with all of the rights, remedies, powers and authorities granted in the Illinois Act to the fullest extent permitted by law. Without limiting the generality of the foregoing, (i) in addition to any other provision of this Mortgage authorizing the Administrative Agent to take or be placed in possession of the mortgaged property, or for the appointment of a receiver, Administrative Agent shall have the right, in accordance with 735 ILCS 5/15-1701 and 1702, to be placed in possession of the mortgaged property or at its request to have a receiver appointed, and such receiver, or Administrative Agent, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in ILCS 5/15-1701 and 1703, and (ii) all expenses incurred by Administrative Agent, to the extent reimbursable under 735 ILCS 5/15-1510, 735 ILCS 5/15-1512, or any other provisions of the Illinois Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.

(v) As to the Other Mortgaged Properties located in the State of Colorado, Administrative Agent may proceed by suit or suits in equity or at law to foreclose this Mortgage by judicial action or in any manner then permitted by any applicable Requirement of Law. Administrative Agent shall be entitled to all of the rights, remedies and benefits of a secured party, a mortgagee and a beneficiary granted under any applicable Requirement of Law; and shall be entitled to enforce all such rights, remedies and benefits. Mortgagor intends and hereby grants to Administrative Agent all such rights, powers and remedies whether or not such rights, powers and remedies are expressly granted or reserved herein. Any sale of the Other Mortgaged Properties under this Article IV shall take place at such place or places and otherwise in such manner and upon such notice as may be required by law; or, in the absence of any such requirement, as Administrative Agent may deem appropriate.

(vi) As to Other Mortgaged Properties located in the State of Idaho, the Administrative Agent may foreclose this Mortgage by judicial action pursuant to I.C. 6-101 et seq. or in any manner permitted by any applicable Requirement of Law.

(vii) As to the Other Mortgaged Properties located in the State of Michigan, Administrative Agent may immediately (1) commence foreclosure proceedings against the Properties through judicial proceedings or (2) commence foreclosure by advertisement proceedings against the real estate collateral pursuant to the Foreclosure by Advertisement Statute MCLA 600.3201 *et seq.*, in such case made and provided and to sell the Properties or to cause the same to be sold at public sale in accordance with said Statute, in either proceeding as a single parcel or in several parcels at the option of Administrative Agent. Mortgagor hereby acknowledges that this Mortgage contains a **POWER OF SALE** and that in the event Administrative Agent elects to foreclose by advertisement pursuant to the **POWER OF SALE**, in accordance with MCLA 600.3201 *et seq.*, **MORTGAGOR EXPRESSLY WAIVES NOTICE THEREOF (EXCEPT ANY NOTICE REQUIRED UNDER THE AFORESAID STATUTE), A HEARING**

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**PRIOR TO SALE AND ANY RIGHT, CONSTITUTIONAL OR OTHERWISE, THAT MORTGAGOR MIGHT OTHERWISE HAVE TO REQUIRE A JUDICIAL FORECLOSURE.**

(viii) As to the Other Mortgaged Properties located in Montana, this Mortgage may be foreclosed by advertisement and sale in the manner provided in the Small Tract Finance Act of Montana or by judicial proceeding as provided by Montana Law for the foreclosure of mortgages on real property.

(ix) As to Other Mortgaged Properties located in the State of Ohio, this Mortgage may be foreclosed as to the Mortgaged Properties or any part thereof in any manner permitted by any applicable Requirement of Law.

(x) As to the Other Mortgaged Properties located in the Commonwealth of Pennsylvania, Administrative Agent may institute an action of mortgage foreclosure, or take such other action as the Law may allow, at law or in equity, for the enforcement thereof and realization on the mortgage security or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire unpaid balance of the indebtedness secured hereby, with interest, at the rates and pursuant to the methods of calculation specified in the Loan Documents and this Mortgage to the date of default and thereafter at the rates provided in the Loan Documents together with all other sums secured by this Mortgage, all costs of suit, interest at the rates specified in the Loan Documents on any judgment obtained by Administrative Agent from and after the date of any Sheriff's Sale of the Mortgaged Properties (which may be sold, subject to all any applicable Requirement of Law, in one parcel or in such parcels, manner or order as Administrative Agent shall elect) until actual payment is made by the Sheriff of the full amount due Administrative Agent and the Secured Parties and/or their Affiliates, and a reasonable attorneys' commission for collection, without further stay, any Requirement of Law, usage or custom to the contrary notwithstanding.

(xi) As to the Other Mortgaged Properties located in the State of Utah, this Mortgagee may be foreclosed as to the Mortgaged Properties in any manner permitted by applicable law.

(xii) As to the Other Mortgaged Properties located in any state the following shall apply:

**A POWER OF SALE HAS BEEN GRANTED IN THIS MORTGAGE. A POWER OF SALE MAY ALLOW ADMINISTRATIVE AGENT TO TAKE THE OTHER MORTGAGED PROPERTIES AND SELL THEM WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY MORTGAGOR UNDER THIS MORTGAGE.**



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(c) Upon the occurrence of a default, this Mortgage may be foreclosed as to the Georgia Secured Property, or any part thereof, by power of sale (if permitted under any applicable Requirement of Law), by judicial action, or in any other manner permitted by any applicable Requirement of Law. Cumulative of the foregoing and the other provisions of this Section 4.3

(i) Administrative Agent may sell or offer for sale the Georgia Secured Property in such portions, order and parcels as Administrative Agent may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction. Such sale shall be made in accordance with the provisions of Section 4.3(c)(ii) below relating to the sale of real estate or by Chapter 9 of the UCC relating to the sale of collateral after default by a debtor (as such laws now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale (A) whether made under the power herein contained, the UCC, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Administrative Agent to be physically present at or to have constructive possession of the Georgia Secured Property (Mortgagor shall deliver to Administrative Agent any portion of the Georgia Secured Property not actually or constructively possessed by Administrative Agent immediately upon demand by Administrative Agent), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if Administrative Agent had been actually present and delivered to purchaser at such sale, (B) each instrument of conveyance executed by Administrative Agent shall contain general warranties of title (or limited or no warranties if Administrative Agent shall so elect), binding upon Mortgagor, (C) each recital contained in any instrument of conveyance made by Administrative Agent shall constitute prima facie evidence of the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Indebtedness and advertisement and conduct of such sale in the manner provided herein and otherwise by law, (D) any prerequisites to the validity of such sale shall be presumed to have been performed, (E) the receipt of Administrative Agent or other party making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or non-application thereof, and (F) to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Upon any sale made under or by virtue of this Section (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Administrative Agent may bid for and acquire the Georgia Secured Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness the net sale price after deducting

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therefrom the expenses of the sale and the costs of the action and any other sums which Administrative Agent is authorized to deduct under this Security Deed.

(ii) Sell the Georgia Secured Property or any part of the Georgia Secured Property at public sale or sales before the door of the courthouse of the county in which the Georgia Secured Property or any part of the Georgia Secured Property is situated, to the highest bidder for cash in order to pay the Indebtedness secured hereby and accrued interest thereon and insurance premiums, liens, assessments, taxes and charges, including utility charges, if any, with accrued interest thereon, and all expenses of the sale and of all proceedings in connection therewith, including reasonable attorneys' fees, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which Sheriff's sales are advertised in said county. At any such public sale, Administrative Agent may execute and deliver to the purchaser a conveyance of the Georgia Secured Property or any part of the Georgia Secured Property in fee simple, with full warranties of title (or without warranties if Administrative Agent shall so elect) and to this end, Mortgagor hereby constitutes and appoints Administrative Agent the agent and attorney-in-fact of Mortgagor to make such sale and conveyance, and thereby to divest Mortgagor of all right, title and interest, equity and equity of redemption that Mortgagor may have in and to the Georgia Secured Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Mortgagor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, are granted as cumulative of the other remedies provided hereby or by law for collection of the Indebtedness secured hereby and shall not be exhausted by one exercise thereof but may be exercised until full payment of all Indebtedness secured hereby. Administrative Agent may adjourn from time to time any sale by it to be made under or by virtue of this Security Deed by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Administrative Agent, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the occurrence of a default, Administrative Agent may exercise its rights of enforcement with respect to the Collateral under the Texas Business and Commerce Code, as amended, under the UCC of **Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia and Washington**, as amended, or under the UCC or any other statute in force in any state to the extent the same is any applicable Requirement of Law. Cumulative of the foregoing and the other provisions of this Section 4.3:

(i) To the extent permitted by any Requirement of Law, Administrative Agent may enter upon the Mortgaged Properties or otherwise upon Mortgagor's premises to take possession of, assemble and collect the Collateral or to render it unusable; and

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(ii) Administrative Agent may require Mortgagor to assemble the Collateral and make it available at a place Administrative Agent designates which is mutually convenient to allow Administrative Agent to take possession or dispose of the Collateral; and

(iii) written notice mailed to Mortgagor as provided herein at least ten (10) days (except with respect to Collateral located in the State of Wisconsin, then ten (10) days) prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(iv) in the event of a foreclosure of the Liens, privileges, and/or security interests evidenced hereby, the Collateral, or any part thereof, and the Mortgaged Properties, or any part thereof, may, at the option of Administrative Agent, be sold, as a whole or in parts, together or separately (including, without limitation, where a portion of the Mortgaged Properties is sold, the Collateral related thereto may be sold in connection therewith); and

(v) the expenses of sale provided for in Section 4.6 shall include the reasonable expenses of retaking the Collateral, or any part thereof, holding the same and preparing the same for sale or other disposition; and

(vi) should, under this subsection, the Collateral be disposed of other than by sale, any proceeds of such disposition shall be treated under Section 4.6 as if the same were sales proceeds.

(e) To the extent permitted by any applicable Requirement of Law, the sale hereunder of less than the whole of the Property shall not exhaust the powers of sale herein granted or the right to judicial foreclosure, and successive sale or sales may be made until the whole of the Property shall be sold, and, if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the indebtedness secured hereby and the expense of conducting such sale, this Mortgage and the Liens, privileges, and security interests hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made; provided, however, that Mortgagor shall never have any right to require the sale of less than the whole of the Property. In the event any sale hereunder is not completed or is defective in the opinion of Administrative Agent, such sale shall not exhaust the powers of sale hereunder or the right to judicial foreclosure, and Administrative Agent shall have the right to cause a subsequent sale or sales to be made. Any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by any Requirement of Law. The Trustee or his successor or substitute, and the Administrative Agent acting under power of sale, respectively, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by it (including, without limitation, the posting of notices and the conduct of sale), and such appointment need not be in writing or recorded. Any and all statements of fact or other recitals made in any deed or deeds, or other instruments of transfer, given in connection with a sale as to nonpayment of the secured indebtedness or as to the occurrence of any default, or as to all of the secured indebtedness having been declared to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or, with respect to

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any sale by the Trustee, or any successor or substitute trustee, as to the refusal, failure or inability to act of Trustee or any substitute or successor trustee or the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done, shall be taken as prima facie evidence of the truth of the facts so stated and recited. Notwithstanding any reference herein to the Notes, the Credit Agreement, any other Loan Document or any Specified Swap Agreement or any Specified Cash Management Agreement, all persons dealing with the Mortgaged Properties shall be entitled to rely on any document, or certificate, of the Administrative Agent as to the occurrence of an event, such as a Default, and shall not be charged with or forced to review any provision of any other document to determine the accuracy thereof. With respect to any sale held in foreclosure of the Liens, privileges, and/or security interests covered hereby, it shall not be necessary for the Trustee, Administrative Agent, any public officer acting under execution or order of the court or any other party to have physically present or constructively in his/her or its possession, either at the time of or prior to such sale, the Property or any part thereof.

Section 4.4. Effective as Mortgage. As to the Deed of Trust Mortgaged Properties, this instrument shall be effective as a mortgage as well as a deed of trust and upon the occurrence of a default may be foreclosed as to the Deed of Trust Mortgaged Properties, or any portion thereof, in any manner permitted by any applicable Requirement of Law, and any foreclosure suit may be brought by Trustee or by Administrative Agent. To the extent, if any, required to cause this instrument to be so effective as a mortgage as well as a deed of trust, Mortgagor hereby mortgages the Deed of Trust Mortgaged Properties to Administrative Agent. In the event a foreclosure hereunder as to the Deed of Trust Mortgaged Properties, or any part thereof, shall be commenced by Trustee, or his substitute or successor, Administrative Agent may at any time before the sale of such properties direct Trustee to abandon the sale, and may then institute suit for the foreclosure of this Mortgage as to such properties. It is agreed that if Administrative Agent should institute a suit for the foreclosure of this Mortgage, Administrative Agent may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, its substitute or successor, to sell the Deed of Trust Mortgaged Properties, or any part thereof, in accordance with the provisions of this Mortgage. This Mortgage shall also constitute and may be enforced from time to time as an assignment, chattel mortgage, contract, deed of trust, mortgage, financing statement and security agreement, and from time to time as any one or more thereof as appropriate under any applicable Requirement of Law. Administrative Agent shall be entitled to all of the rights, remedies and benefits of a secured party, mortgagee and a beneficiary granted under any applicable Requirement of Law; and, to the fullest extent of such law, shall be entitled to enforce such rights, remedies and benefits. Mortgagor intends and hereby grants to Administrative Agent all rights, powers and remedies accorded a secured party, mortgagee and a beneficiary under any applicable Requirement of Law whether or not such rights, powers and remedies are expressly granted or reserved herein.

Section 4.5. Receiver. In addition to all other remedies herein provided for, Mortgagor agrees that, upon the occurrence of a default, Administrative Agent shall as a matter of right be entitled to the appointment of a receiver or receivers by *ex parte* application, without notice to Mortgagor (except in Oklahoma a receiver may only be appointed in accordance with OKLA. STAT. title 12 § 1551; and in Virginia a receiver may only be appointed without notice in accordance with Sections 8.01-592 and 8.01-594, Code of Virginia (1950), as amended), for all or any part of the Property, whether such receivership be incident to a proposed sale (or sales) of



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such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby. Furthermore, Mortgagor does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, and agrees not to oppose any application therefor by Administrative Agent, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Administrative Agent under Article III hereof. Mortgagor expressly waives notice of a hearing for appointment of a receiver and the necessity for bond or an accounting by the receiver. Any receiver shall have all powers conferred by the court appointing such receiver, which powers shall, to the extent not prohibited by any applicable Requirement of Law, include, without limitation, the right to enter upon and take immediate possession of the Property or any part thereof, to exclude Mortgagor therefrom, to hold, use, operate, manage and control the Property, to make all such repairs, replacements, alterations, additions and improvements to the same as such receiver or Administrative Agent may deem proper or expedient, to lease, sell or otherwise transfer the Property or any portion thereof as such receiver or Administrative Agent may deem proper or expedient, and to demand and collect all of the other earnings, rents, issues, profits, proceeds and other sums due or to become due with respect to the Property. Nothing herein is to be construed to deprive Administrative Agent of any other right, remedy or privilege it may now or hereafter have under any applicable Requirement of Law to have a receiver appointed. Any money advanced by Administrative Agent in connection with any such receivership shall be a demand obligation (which obligation Mortgagor hereby expressly promises to pay) owing by Mortgagor to Administrative Agent and shall bear interest, from the date of making such advancement by Administrative Agent until paid, at the rate set forth in Section 2.9(c) of the Credit Agreement.

Section 4.6. Proceeds of Foreclosure. The proceeds of any sale held in foreclosure of the Liens, privileges, and/or security interests evidenced hereby shall be applied as required by any applicable Requirement of Law, or in the absence of any such requirement in accordance with Section 8.2 of the Credit Agreement.

Section 4.7. Secured Party as Purchaser. Any party constituting a Secured Party under the Credit Agreement shall have the right to bid for and to become the purchaser at any sale held in foreclosure of the Liens, privileges, and/or security interests evidenced hereby, and any party constituting a Secured Party which is purchasing at any such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the secured indebtedness owing to such party, or if such party holds less than all of such indebtedness, the pro rata part thereof owing to such party, accounting to Administrative Agent or any Secured Party, if such party is not joining in such bid, in cash for the portion of such bid or bids apportionable to such non-bidding Secured Party or Secured Parties. Administrative Agent shall have the right to bid for and become the purchaser at any sale held in foreclosure of the Liens, privileges, and/or security interests evidenced hereby and shall be entitled to apply all or any part of the indebtedness as credit to the purchase price to the extent permitted by any applicable Requirement of Law

Section 4.8. Foreclosure as to Matured Debt. Upon the occurrence of a default, Administrative Agent shall have the right to proceed with foreclosure of the Liens, privileges, and/or security interests evidenced hereby without declaring the entire secured indebtedness due, and in such event, any such foreclosure sale may be made subject to the unmatured part of the

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secured indebtedness and shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, this Mortgage shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 4.6. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the secured indebtedness.

Section 4.9. Remedies Cumulative. All remedies herein provided for are cumulative of each other and of all other remedies existing at any applicable Requirement of Law or in equity and are cumulative of any and all other remedies provided for in any other Loan Document, any Specified Swap Agreement or any Specified Cash Management Agreement, and, in addition to the remedies herein provided, there shall continue to be available all such other remedies as may now or hereafter exist at Law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the Liens, privileges, and/or security interests evidenced hereby, and the resort to any remedy provided for hereunder, under any such other Loan Document, under any Specified Swap Agreement, any Specified Cash Management Agreement, or provided for by any Requirement of Law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

Section 4.10. Discretion as to Security. Administrative Agent may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Administrative Agent in its sole and uncontrolled discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits, Liens, privileges, or security interests evidenced by this Mortgage.

Section 4.11. Mortgagor's Waiver of Certain Rights. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any Requirement of Law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, Mortgagor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by any applicable Requirement of Law, hereby waives and releases all rights of appraisal, valuation, stay of execution, redemption, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Mortgagor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the Liens, privileges, and/or security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of Law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, or other matters whatever to defeat, reduce or affect the right under the terms of this Mortgage to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right under the terms of this Mortgage to the payment of the secured indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. In particular, but without limitation of the foregoing, to the fullest extent that Mortgagor may do so, Mortgagor waives (i) the benefit of every Requirement of Law now existing or that hereafter may be enacted limiting the amount of indebtedness that can be collected, either before or after foreclosure, by court action or by power of sale, in relation to the value of the property described herein; and (ii) the benefit of every Requirement of Law that may

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be hereafter enacted in any way limiting the time for any action for the collection of indebtedness by reference to the time of exercise of any remedy available hereunder, or extending the time for enforcing collection of the indebtedness or creating or extending a period of redemption from any sale made in collecting the indebtedness. Mortgagor acknowledges and agrees that the property described herein may be part of collateral located in more than one state, and therefore Mortgagor waives and relinquishes any and all rights it may have, whether at Law or equity, to require Administrative Agent to proceed to enforce or exercise any rights, powers and remedies they may have under the Loan Documents, any Specified Swap Agreement, or any Specified Cash Management Agreement in any particular manner, in any particular order, or in any particular state or other jurisdiction. Mortgagor further agrees that any particular proceeding, including without limitation foreclosure through court action (in a state or federal court) or power of sale, may be brought and prosecuted in any one or more states as to all or any part of the collateral, wherever located, without regard to the fact that any one or more prior or contemporaneous proceedings have been commenced elsewhere with respect to the same or any other part of the collateral. If any Requirement of Law referred to in this section and now in force, of which Mortgagor or Mortgagor's representatives, successors or assigns or any other persons claiming any interest in the Mortgaged Properties or the Collateral might take advantage despite this section, shall hereafter be repealed or cease to be in force, such Requirement of Law shall not thereafter be deemed to preclude the application of this section.

Section 4.12. Mortgagor as Tenant Post-Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale Mortgagor or Mortgagor's representatives, successors or assigns or any other persons claiming any interest in the Property by, through or under Mortgagor are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser. To the extent permitted by any applicable Requirement of Law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the property (such as an action for forcible entry and detainer) in any court having jurisdiction.

Section 4.13. Limitation on Rights and Waivers. All rights, powers and remedies herein conferred shall be exercisable by Trustee and Administrative Agent only to the extent not prohibited by any applicable Requirement of Law; and all waivers and relinquishments of rights and similar matters shall only be effective to the extent such waivers or relinquishments are not prohibited by any applicable Requirement of Law.

Section 4.14. Waiver of Appraisement. Appraisement of the Property is hereby waived or not waived at Administrative Agent's option, which shall be exercised at the time judgment is rendered in any foreclosure hereof or at any time prior hereto.

Section 4.15. Waiver of Arkansas Right of Redemption. In addition to and without limitation to the foregoing in any manner, Mortgagor hereby releases unto Administrative Agent

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and Secured Parties all right of redemption under any Requirement of Law of the State of Arkansas, including without limitation all rights under Ark. Code Ann. §18-49-106, as amended.

Section 4.16. Waiver of Oklahoma Appraisal. As to Property situated in or otherwise subject to any Requirement of Law of the State of Oklahoma, appraisal of the Property is hereby waived (or not) at the option of Administrative Agent, such option to be exercised at the time judgment is rendered in any foreclosure hereof or at any time prior thereto.

Section 4.17. Conveyance to Purchaser. Any deed, bill of sale or other conveyance executed by or on behalf of the Administrative Agent, the Trustee, the sheriff or other official or party responsible for conducting the sale shall be prima facie evidence of the compliance with all statutory requirements for the sale, the execution of such deed, bill of sale or other conveyance, and the truth and accuracy of the recitals and other matters stated therein, including, without limitation, nonpayment or nonperformance of the Obligations, violation of the terms and covenants contained herein, and the advertisement and conduct of such sale in the manner provided herein or as provided by any applicable Requirement of Law. Mortgagor does hereby ratify and confirm all legal acts that Trustee and Administrative Agent may do in carrying out the provisions of this Mortgage. Any sale of the Collateral or any portion thereof pursuant to the provisions of this Article IV will operate to divest all right, title, interest, claim and demand of Mortgagor in and to the property sold and will be a perpetual bar against Mortgagor and shall, subject to any applicable Requirement of Law, vest title in the purchaser free and clear of all liens, security interests and encumbrances, including without limitation, liens, security interests and encumbrances junior or subordinate to the liens, security interests and encumbrances created by this Mortgage, except for Customary Permitted Liens. Upon any sale of the Collateral or any portion thereof pursuant to the provisions of this Article IV, the receipt by Administrative Agent, Trustee, the sheriff or other official or party responsible for conducting the sale of the proceeds from such sale shall be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and the heirs, devisees, personal representatives, successors and assigns thereof shall not, after paying such purchase money and receiving such receipt of Administrative Agent, Trustee, the sheriff or such other official or party, be obliged to see to the application thereof or be in anywise answerable for any loss, misapplication or nonapplication thereof. Any purchaser at a sale will, subject to mandatory redemption periods, if any, receive immediate possession of the Collateral purchased, and Mortgagor agrees that if Mortgagor retains possession of the Collateral or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be guilty of forcible detainer, and will be subject to eviction and removal, forcible or otherwise, with or without process of law and all damages to Mortgagor by reason thereof are hereby expressly waived by Mortgagor.

Section 4.18. Federal and Tribal Transfers. Upon a sale conducted pursuant to this Article IV of all or any portion of the Mortgaged Properties consisting of interest (the "**Federal and Tribal Interests**") in leases, easements, rights-of-way, agreements or other documents and instruments covering, affecting or otherwise relating to federal or tribal lands (including, without limitation, leases, easements and rights-of-way issued by the Bureau of Land Management; leases, easements, and rights of-way issued by the Bureau of Indian Affairs; and leases, easements, rights-of-way and minerals agreements with tribal governments or agencies or



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allottees), Mortgagor agrees to take all action and execute all instruments necessary or advisable to transfer the Federal and Tribal Interest to the purchaser at such sale, including without limitation, to execute, acknowledge and deliver assignments of the Federal and Tribal Interests on officially approved forms in sufficient counterparts to satisfy applicable statutory and regulatory requirements, to seek and request approval thereof and to take all other action necessary or advisable in connection therewith. Mortgagor hereby irrevocably appoints Administrative Agent as Mortgagor's attorney-in-fact and proxy, with full power and authority in the place and stead of Mortgagor, in the name of Mortgagor or otherwise to take any such action and execute any such instrument on behalf of Mortgagor that Administrative Agent may deem necessary or advisable to so transfer the Federal and Tribal Interests, including without limitation, the power and authority to execute, acknowledge and deliver such assignments, to seek and request approval thereof, and to take all other action deemed necessary or advisable by Administrative Agent in connection therewith; and Mortgagor hereby adopts, ratifies and confirms all such actions and instruments. Such power of attorney and proxy is coupled with an interest, shall survive the dissolution, termination, reorganization or other incapacity of Mortgagor and shall be irrevocable. No such action by Administrative Agent shall constitute acknowledgment of, or assumption of liabilities relating to, the Federal and Tribal Interests, and neither Mortgagor nor any other party may claim that Administrative Agent is bound, directly or indirectly, by any such action.

Section 4.19. Application of Proceeds with respect to Deed of Trust Mortgaged Properties located in Virginia. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of the Deed of Trust Mortgaged Properties located in Virginia, or any part thereof shall be applied by Trustee or Administrative Agent (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following order of priority (unless Administrative Agent designates a different order of priority, which order shall then apply) or as may be otherwise required by law or as Administrative Agent may otherwise designate:

(a) to discharge all taxes, levies, and assessment, with costs and interest if they have priority over the lien of this Mortgage, including the due pro rata thereof for the current year;

(b) to discharge in the order of their priority, if any, the remaining debts and obligations secured by this Mortgage and any liens of record inferior to this Mortgage under which sale is made, with interest and other charges accrued thereon; and

(c) the residue of the proceeds shall be paid to the Mortgagor or his assigns; *provided, however*, that the Trustee as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the Mortgagor's equity, without actual notice thereof prior to distribution.

Section 4.20. Purchase by Administrative Agent with respect to Deed of Trust Mortgaged Properties located in Virginia. Upon any foreclosure sale or sales of all or any portion of the Deed of Trust Mortgaged Properties located in Virginia under the power herein granted, Administrative Agent may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

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Section 4.21. Right of Redemption with Respect to Deed of Trust Mortgaged Properties in New Mexico. If the Deed of Trust Mortgaged Properties located in New Mexico are sold at a foreclosure sale following a court-ordered judicial foreclosure, the redemption period after the foreclosure sale shall be one month instead of nine months as provided in Section 39-5-19 NMSA 1978. If the Deed of Trust Mortgaged Properties located in New Mexico are sold under the power of sale, Mortgagor shall have no right of redemption; however, the redemption period for any omitted junior encumbrancer entitled to redeem the Deed of Trust Mortgaged Properties in New Mexico shall be one month instead of nine months as provided in Section 39-5-18E NMSA 1978.

## ARTICLE V Miscellaneous

Section 5.1. Scope of Mortgage. This Mortgage is a deed of trust and mortgage of both real/immovable and personal/movable property, a security agreement, a financing statement and an assignment, and also covers proceeds and fixtures and all rights as set out herein.

Section 5.2. Effective as a Financing Statement. This Mortgage covers goods which are or are to become fixtures related to the real/immovable property described herein, and this Mortgage shall be effective as a financing statement filed as a fixture filing (within the meaning of the applicable UCC) with respect to all goods which are or are to become fixtures with respect to the Mortgaged Properties. This Mortgage is to be filed for record in the real/immovable property records of each county (or the City of St. Louis Missouri as to the Deed of Trust Mortgaged Properties located in the City of St. Louis, Missouri, and the City of Newport News, Virginia, as to the Deed of Trust Mortgaged Properties located in the City of Newport News, Virginia)) where any part of the Mortgaged Properties is situated and the office of the Oklahoma Secretary of State, may also be filed in the offices of the Bureau of Land Management, the General Land Office, or the Minerals Management Service or any relevant federal or state agency (or any successor agencies). This Mortgage shall also be effective as a financing statement covering any other Property which is or is to become fixtures and may be filed in any other appropriate filing or recording office, including, but not limited to, the appropriate office(s) of any jurisdiction in order to perfect the security interests in the Property which is or is to become fixtures. The information provided in this Section 5.2 is provided so that this Mortgage shall comply with the requirements of the UCC for a mortgage instrument to be filed as a financing statement. Mortgagor is the "Debtor" and its name and mailing address are set forth on the signature page hereto. Administrative Agent is the "Secured Party" and its name and mailing address from which information concerning the security interest granted herein may be obtained are set forth set forth on the signature page to this Mortgage. A statement describing the portion of the Mortgaged Properties comprising the fixtures hereby secured is set forth in Section 1.1 and Section 1.2 of this Mortgage. Mortgagor represents and warrants to Administrative Agent that Mortgagor is the record owner of (or has a leasehold interest in) the Mortgaged Properties, the employer identification number of Mortgagor and the organizational identification number of Mortgagor are set forth on the cover page (after the recording cover sheet, if any) hereto. Nothing contained in this paragraph shall be construed to limit the scope of this Mortgage, nor its effectiveness as a financing statement covering any type of Property.

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With Regard to Other Mortgaged Properties located in Indiana:

Name and address of the Debtor:	201 NW 10 <sup>th</sup> , Suite 200 Oklahoma City, Oklahoma 73103
Type of organization:	Limited Liability Company
Jurisdiction of organization:	Texas
Organization Id No.:	801211423
Name and address of Secured Party:	Wells Fargo Bank, National Association, administrative agent MAC D1109-019 1525 W. W. T. Harris Blvd, 1st Floor Charlotte, NC 28262-8522
Description of the types (or items) of property covered by this Financing Statement:	The Mortgaged Property described in the Granting Clauses above
Description of real estate located in Indiana to which the collateral is attached or upon which it is or will be located :	Those certain tracts of land described in Exhibit "A"
Record owner of real estate to which the collateral is attached or upon which it is or will be located:	<b>BKEP MATERIALS, L.L.C.</b> (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company 201 NW 10 <sup>th</sup> , Suite 200 Oklahoma City, Oklahoma 73103

Section 5.3. Reproduction of Mortgage as Financing Statement. Except as prohibited by any applicable Requirement of Law, a carbon, photographic, facsimile or other reproduction of this Mortgage may be attached as part of any financing statement relating to this Mortgage. Without limiting any other provision herein, Mortgagor hereby authorizes Administrative Agent to file one or more financing statements, or renewal or continuation statements thereof, describing the Collateral, including, without limitation, a financing statement covering "all assets of Mortgagor, all proceeds therefrom and all rights and privileges with respect thereto," and hereby ratifies any thereof filed prior to the execution of this Mortgage.

Section 5.4. Notice to Account Debtors. In addition to, but without limitation of, the rights granted in Article III hereof, Administrative Agent may, at any time after a default has occurred that is continuing, notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Administrative Agent directly.

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Section 5.5. Waivers. Administrative Agent may at any time and from time to time in writing waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing, or consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing, or release any part of the Property or any interest therein from the Lien, privilege, and security interest of this Mortgage, without the joinder of Trustee. Any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein, in any other Loan Document or in any Specified Swap Agreement or any Specified Cash Management Agreement may be released from all or any part of such obligations without impairing or releasing the liability of any other party. No such act shall in any way impair any rights or powers hereunder except to the extent specifically agreed to in such writing.

Section 5.6. No Impairment of Security. To the extent allowed by any Requirement of Law, the Lien, privilege, security interest and other security rights hereunder shall not be impaired by any indulgence, moratorium or release which may be granted including, but not limited to, any renewal, extension or modification which may be granted with respect to any secured indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which may be granted in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness.

Section 5.7. Acts Not Constituting Waiver. Any default may be waived without waiving any other prior or subsequent default. Any default may be remedied without waiving the default remedied. Neither failure to exercise, nor delay in exercising, any right, power or remedy upon any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Administrative Agent and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Acceptance of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder.

Section 5.8. Mortgagor's Successors. In the event the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, then, without notice to Mortgagor, such successor or successors in interest may be dealt with, with reference to this Mortgage and to the indebtedness secured hereby, in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance, and no extension of the time for the payment of the indebtedness secured hereby, shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder or for the payment of the indebtedness or performance of the obligations secured



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hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby.

Section 5.9. Place of Payment. All secured indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Credit Agreement or Notes (or if no such designation is made, at the address of Administrative Agent indicated at the end of this Mortgage), or at such other place as Administrative Agent may designate in writing.

Section 5.10. Subrogation to Existing Liens. To the extent that proceeds of the Notes are used to pay indebtedness secured by any outstanding Lien, privilege, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced at Mortgagor's request, and the party or parties advancing the same shall be subrogated to any and all rights, security interests, privileges, and Liens owned by any owner or holder of such outstanding Liens, privileges, security interests, charges or encumbrances, irrespective of whether said Liens, privileges, security interests, charges or encumbrances are released, and it is expressly understood that, in consideration of the payment of such indebtedness, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments to, upon and in connection with the said indebtedness.

Section 5.11. Application of Payments to Certain Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the Lien, privilege and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 5.12. Compliance With Usury Laws. It is the intent of Mortgagor, Administrative Agent and all other parties to the Loan Documents and the Specified Swap Agreements and Specified Cash Management Agreements to contract in strict compliance with any applicable usury Requirement of Law from time to time in effect. In furtherance thereof, it is stipulated and agreed that none of the terms and provisions contained herein, in the other Loan Documents or in any Specified Swap Agreement or any Specified Cash Management Agreement shall ever be construed to create a contract to pay, for the use, forbearance or detention of money, interest in excess of the maximum amount of interest permitted to be collected, charged, taken, reserved, or received by any applicable Requirement of Law from time to time in effect.

Section 5.13. Substitute Trustee. The Trustee may resign by an instrument in writing addressed to Administrative Agent, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Administrative Agent. In case of the death, resignation, removal, or disqualification of Trustee, or if for any reason Administrative Agent shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Administrative Agent shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by Administrative Agent, and, in Administrative Agent's discretion, recorded in the office of the county recorder where any portion of the Property is located, and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness

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secured hereby has been paid in full, or until the Property is sold hereunder. In the event the secured indebtedness is owned by more than one person or entity, the holder or holders of not less than a majority in the amount of such indebtedness shall have the right and authority to make the appointment of a successor or substitute trustee as provided for in the preceding sentence or to remove Trustee as provided in the first sentence of this section. Such appointment and designation by Administrative Agent, or by the holder or holders of not less than a majority of the indebtedness secured hereby, shall be full evidence of the right and authority to make the same and of all facts therein recited. If Administrative Agent is a corporation or other business entity and such appointment is executed in its behalf by an officer of such corporation or other business entity, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or other business entity. Administrative Agent may act through an agent or attorney-in-fact in substituting trustees. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Deed of Trust Mortgaged Properties shall vest in the named successor or substitute Trustee and such successor or substitute shall thereupon succeed to, and shall hold, possess and execute, all the rights, powers, privileges, immunities and duties herein conferred upon Trustee; but nevertheless, upon the written request of Administrative Agent or of the successor or substitute Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute Trustee all of the estate and title in the Deed of Trust Mortgaged Properties of the Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee, and shall duly assign, transfer and deliver any of the properties and moneys held by said Trustee hereunder to said successor or substitute Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

Section 5.14. No Liability for Trustee. NOTWITHSTANDING ANY OTHER PROVISION OF THIS MORTGAGE, THE TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THE TRUSTEE'S NEGLIGENCE), EXCEPT FOR TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by the Trustee hereunder, believed by the Trustee in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required under any Requirement of Law), and Trustee shall be under no liability for interest on any moneys received by him hereunder. Mortgagor hereby ratifies and confirms any and all acts which the herein named Trustee or its successor or successors, substitute or substitutes, shall do lawfully by virtue hereof. Mortgagor will reimburse Trustee for, and indemnify and save Trustee harmless against, any and all liability and expenses (including attorneys fees) which may be incurred by Trustee in the performance of his duties. The foregoing indemnities shall not terminate upon the release, foreclosure or other termination of this Mortgage but will survive such release, termination and/or foreclosure of this Mortgage, or conveyance in lieu of foreclosure, and the repayment of the secured indebtedness and the discharge and release of this Mortgage and the other documents evidencing and/or securing the

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secured indebtedness. Any amount to be paid hereunder by Mortgagor to Trustee shall be a demand obligation owing by Mortgagor to Trustee and shall be subject to and covered by the provisions of Section 2.2 hereof.

Section 5.15. Release of Mortgage. If all of the indebtedness secured hereby is indefeasibly paid in full in cash (other than (A) contingent indemnification obligations and any other contingent obligations under the Loan Documents that expressly survive the termination of the Loan Documents and (B) obligations and liabilities under Specified Cash Management Agreements and Specified Swap Agreements either (x) as to which arrangements satisfactory to the applicable Secured Party shall have been made or (y) notice has not been received by the Administrative Agent from the applicable Secured Party that such amounts are then due and payable) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable Issuing Lender shall have been made), and if the Commitments under the Credit Agreement have been terminated, then the Mortgagor may request that this Mortgage be terminated and the Administrative Agent shall promptly terminate this Mortgage. Upon such termination the Mortgagor may further request that a written act of release of this Mortgage or other applicable instrument be provided in accordance with any applicable Requirement of Law (except this Mortgage shall be reinstated to the extent expressly provided herein, and will continue with respect to indemnification and other rights which are to continue following the release hereof). Administrative Agent agrees to deliver to Mortgagor, or such person or entity designated by Mortgagor, such an act of release (subject to the foregoing limitation), all at the cost and expense of the Mortgagor, within ten (10) business days (or such lesser number of days as may be mandated by any applicable Requirement of Law or permitted by the Administrative Agent) of receiving such request unless Administrative Agent in good faith, has cause to believe that Mortgagor is not entitled to a termination of this Mortgage. Notwithstanding the foregoing, it is understood and agreed that certain indemnifications, and other rights, which are provided herein to continue following the release hereof, shall continue in effect notwithstanding such release; and provided that if any payment to any Secured Party or Administrative Agent, is held to constitute a preference or a voidable transfer under any applicable state or federal Requirement of Law or if for any other reason any Secured Party or Administrative Agent, is required to refund such payment to the payor thereof or to pay the amount thereof to any third party, this Mortgage shall be reinstated to the extent of such payment or payments. If any Property or Collateral is Disposed of as part of or in connection with any Disposition permitted under the Credit Agreement, the Administrative Agent shall execute and deliver to the Mortgagor, at Mortgagor's sole cost and expense, such partial releases of this Mortgage with respect to such Property or Collateral as reasonably requested by the Mortgagor. Except as may be required by any applicable Requirement of Law, Administrative Agent shall have full power and authority to execute, acknowledge and deliver any release or reconveyance of this Mortgage without the joinder therein or execution thereof by Trustee or any other Secured Parties, and any such release of reconveyance shall be binding upon Administrative Agent, Trustee, and the other Secured Parties. All releases and reconveyances executed in connection with this Mortgage shall be without warranty of any kind, express, implied or statutory. Mortgagor shall pay all reasonable legal fees and other fees, costs and expenses incurred by Administrative Agent and Trustee for preparing and reviewing instruments of termination and release or reconveyance and the execution and delivery thereof and Mortgagor may require payment of the same prior to delivery of such instruments. The release and reconveyance of this Mortgage and the termination of the

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liens and security interests created by this Mortgage, in whole or in part, shall not terminate or otherwise affect Administrative Agent's right or ability to exercise any right, power or remedy relating to any claim for breach of warranty or representation, for failure to perform any covenant or other agreement, under any indemnity or for fraud, deceit or other misrepresentation or omission occurring prior to the Release Date.

Section 5.16. Notices. All notices, requests, consents, demands and other communications required or permitted hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by facsimile or other electronic transmission, by delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified at the end of this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given (a) in the case of personal delivery or delivery service, as of the date of first attempted delivery at the address and in the manner provided herein, (b) in the case of facsimile or other electronic transmission, upon receipt, and (c) in the case of registered or certified United States mail, three days after deposit in the mail. Notwithstanding the foregoing, or anything else in the Loan Documents or the agreements evidencing Specified Swap Obligations or any Specified Cash Management Agreements which may appear to the contrary, any notice given in connection with a foreclosure of the Liens, privileges, and/or security interests created hereunder, or otherwise in connection with the exercise by Administrative Agent or Trustee of their respective rights hereunder or under any other Loan Document or any Specified Swap Agreement or any Specified Cash Management Agreement, which is given in a manner permitted by any applicable Requirement of Law shall constitute proper notice; without limitation of the foregoing, notice given in a form required or permitted by statute shall (as to the portion of the Property to which such statute is applicable) constitute proper notice.

Section 5.17. Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 5.18. Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Notes and secured by this Mortgage which are set forth in any Requirement of Law of any Governmental Authority, and further agrees upon request of Administrative Agent to furnish Administrative Agent with evidence of such compliance.

Section 5.19. Gender, Titles. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions.



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Section 5.20. Recording. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Trustee or Administrative Agent shall reasonably request and will pay all such recording, filing, re-recording and refile taxes, fees and other charges.

Section 5.21. Certain Consents. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Administrative Agent is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Administrative Agent, and Administrative Agent shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Administrative Agent's judgment. Notwithstanding the foregoing discretion of Administrative Agent, consent shall not be withheld by Administrative Agent for the plugging and abandonment of any well that is subject to a Chiefs Order to Plug and Abandon, issued by the Chief, Division of Oil & Gas, Ohio Department of Natural Resources.

Section 5.22. Certain Obligations of Mortgagor. Without limiting Mortgagor's obligations hereunder, Mortgagor's liability hereunder shall extend to and include all post petition interest, expenses, and other duties and liabilities with respect to Mortgagor's obligations hereunder which would be owed but for the fact that the same may be unenforceable due to the existence of a bankruptcy, reorganization or similar proceeding.

Section 5.23. Joint and Several Liability. Each Borrower and each Mortgagor hereby agree to be jointly and severally responsible and liable for the repayment of all of the secured indebtedness and the performance of all other covenants, agreements and obligations of the Mortgagor hereunder, under the other Loan Documents and under any Specified Swap Agreement or any Specified Cash Management Agreement in each case subject to any limitations on such liability set forth in the Guarantee and Collateral Agreement.

Section 5.24. Counterparts. This Mortgage may be executed in several counterparts, all of which are identical, except that, to facilitate recordation, certain counterparts hereof may include only that portion of Exhibit "A" which contains descriptions of the properties located in (or otherwise subject to the recording or filing requirements and/or protections of the recording or filing acts or regulations of) the recording jurisdiction in which the particular counterpart is to be recorded, and other portions of Exhibit "A" shall be included in such counterparts by reference only. All of such counterparts together shall constitute one and the same instrument. Complete copies of this Mortgage containing the entire Exhibit "A" have been retained by Mortgagor and Administrative Agent.

Section 5.25. Successors and Assigns. The terms, provisions, covenants, representations, indemnifications and conditions hereof shall be binding upon Mortgagor, and the successors and assigns of Mortgagor, and shall inure to the benefit of Trustee and Administrative Agent and their respective successors and assigns, and shall constitute covenants running with the Mortgaged Properties. All references in this Mortgage to Mortgagor, Trustee or Administrative Agent shall be deemed to include all such successors and assigns.

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**Section 5.26. FINAL AGREEMENT OF THE PARTIES. THE WRITTEN LOAN DOCUMENTS 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.**

**Section 5.27. CHOICE OF LAW. THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, VALIDITY, PERFECTION, AND ENFORCEMENT, INCLUDING, WITHOUT LIMITATION, FORECLOSURE OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE REQUIREMENTS OF LAW OF THE RESPECTIVE STATES IN WHICH THE MORTGAGED PROPERTIES ARE LOCATED. ALL OTHER PROVISIONS OF THIS MORTGAGE AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR, ADMINISTRATIVE AGENT, TRUSTEE, AND/OR THE SECURED PARTIES HEREUNDER, SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE REQUIREMENTS OF LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT THAT THIS MORTGAGE APPLIES TO ANY REAL PROPERTY INTERESTS LOCATED BY A PARTICULAR STATE, THIS MORTGAGE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH AND GOVERNED BY THE REQUIREMENTS OF LAW OF SUCH STATE WITH RESPECT TO THE FOLLOWING MATTERS: (1) WHETHER ANY TRANSACTION RELATING TO THIS MORTGAGE TRANSFERS OR CREATES AN INTEREST IN SUCH REAL PROPERTY FOR SECURITY PURPOSES OR OTHERWISE; (2) THE NATURE OF AN INTEREST IN SUCH REAL PROPERTY THAT IS TRANSFERRED OR CREATED BY ANY TRANSACTION RELATING TO THIS MORTGAGE; (3) THE METHOD FOR FORECLOSURE OF A LIEN ON SUCH REAL PROPERTY; (4) THE NATURE OF AN INTEREST IN SUCH REAL PROPERTY THAT RESULTS FROM FORECLOSURE; OR (5) THE MANNER AND EFFECT OF RECORDING OR FAILING TO RECORD EVIDENCE OF ANY TRANSACTION RELATING TO THIS MORTGAGE THAT TRANSFERS OR CREATES AN INTEREST IN SUCH REAL PROPERTY.**

**Section 5.28. CHOICE OF VENUE. MORTGAGOR CONSENTS TO THE JURISDICTION AND VENUE OF ANY COURT LOCATED IN A STATE IN THE EVENT OF ANY LEGAL PROCEEDING UNDER THIS MORTGAGE FOR THAT PORTION OF THE PROPERTY LOCATED IN SUCH STATE.**

**Section 5.29. Limitation on Liability of General Partner.** The General Partner, as general partner of Borrower, shall not be liable for the obligations of Borrower under this Mortgage, including, without limitation, by reason of any payment obligation imposed by governing state partnership statutes and any provision of the applicable limited partnership agreement of Borrower that requires the General Partner to restore a capital account deficit.

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Section 5.30. Limitations as to Parties Constituting Mortgagor. Notwithstanding anything to the contrary contained in this Mortgage, the agreements, covenants, representations and warranties contained herein are made by each Mortgagor as they relate to such Mortgagor and the Property as to which such Mortgagor has any right, title and interest, and not with respect to any other Mortgagor or such other Mortgagor's Property.

## ARTICLE VI

### Special California Provisions

Section 6.1. Inconsistencies. With respect to the Property located in the state of California, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 6.2. California Mortgage Foreclosure Law. No portion of the Obligations shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim or cross-claim, whether liquidated or unliquidated, which the Mortgagor may presently have or claim to have against the trustee, or the Lender. The Mortgagor hereby waives, to the fullest extent permitted by any applicable Requirement of Law, the benefits of California Code of Civil Procedure § 431.70 (and any other any applicable Requirement of Law of similar import) which provides:

Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the person's claim would at the time of filing the answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. For purposes of this section, a money judgment is a demand for money, and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Chapter 3 (commencing with Section 683.010 of Division 1 of Title 9).

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## ARTICLE VII Special Idaho Provisions

Section 7.1. Inconsistencies. With respect to the Property located in the state of Idaho, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 7.2. Redemption. Pursuant to I.C. 11-310, in the event of a mortgage foreclosure of the Mortgaged Property located in the state of Idaho, Mortgagor has the statutory right to redeem the Mortgaged Property located in the state of Idaho within one year if the Mortgaged Property is more than twenty (20) acres and within six months if the Mortgaged Property is twenty (20) acres or less.

Section 7.3. Statute of Frauds. Under I.C. 9-505(5), a promise or commitment to lend money or to grant credit in an original principal amount of fifty thousand dollars (\$50,000) or more, made by a person or entity engaged in the business of lending money or extending credit, must be in writing or such a promise or commitment is not valid.

Section 7.4. One Action Rule. Pursuant to I.C. 6-101, Idaho maintains a one-action rule for the recovery of any debt or the enforcement of any right secured by a mortgage upon real property. Thus, upon the occurrence and during the continuance of any Event of Default, in order for Secured Party to collect on the indebtedness secured by the Mortgage, Secured Party must foreclose on this Mortgage.

Section 7.5. Deficiency Judgment. In the event of a mortgage foreclosure, the parties acknowledge that Idaho law may limit the amount of any deficiency judgment to the difference between the indebtedness (plus costs of foreclosure and sale) and the reasonable value of the Mortgaged Property.

## ARTICLE VIII Special Indiana Provisions

Section 8.1. Inconsistencies. With respect to the Property located in the state of Indiana, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern.



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Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 8.2. Indiana Responsible Property Transfer Law. To the best of Mortgagor's actual knowledge, the Mortgaged Properties located in Indiana (the "**Indiana Properties**"):

(a) do not contain any facility that is subject to reporting under Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022);

(b) is not the site of one (1) or more underground storage tanks for which notification is required under 42 U.S.C. 6991a and IC 13-23-1-2(c)(8)(A); and

(c) is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) in accordance with Section 116 of CERCLA (42 U.S.C. 9616).

Mortgagor has complied with the Responsible Property Transfer Law of Indiana (Ind. Code § 1325-3-1 *et seq.*) in all respects in connection with its execution of this Mortgage.

Section 8.3. Costs of Foreclosure/Indiana Properties. In any suit to foreclose the Lien hereof or enforce any other remedy of Administrative Agent under this Mortgage with respect to the Indiana Properties, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Administrative Agent for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Administrative Agent with respect to environmental matters, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Administrative Agent may deem reasonably necessary in connection with such foreclosure or enforcement of such other remedies or to evidence to bidders at any foreclosure sale the true condition of the title to, the value of or the environmental condition of the Indiana Properties.

Section 8.4. Additional Indiana Remedies. In addition to the rights and remedies provided in Section 4 hereof, upon, or at any time after the filing of a complaint to foreclose this Mortgage with respect to the Indiana Properties, Administrative Agent shall be entitled to the appointment of a receiver of the Indiana Properties by the court in which such complaint is filed and Mortgagor hereby consents to such appointment.

Section 8.5. Attorneys Fees. As used herein, the terms "**attorneys' fees**," "**reasonable attorneys' fees**," "**reasonable counsel's fees**," "**costs of collection**," "**costs and expenses of enforcement**" and similar terms and phrases shall include, without limitation, costs and fees of paralegals, support staff costs and amounts expended in litigation preparation and computerized research, telephone and telefax expenses, mileage, depositions, postage, photocopies, process service and video tapes.

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## ARTICLE IX Special Illinois Provisions

Section 9.1. Inconsistencies. With respect to the Property located in the state of Illinois, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 9.2. MORTGAGOR'S WAIVER OF RIGHTS. THE MORTGAGOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ACT), OR RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT). EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, THE MORTGAGOR WAIVES THE BENEFIT OF ALL REQUIREMENTS OF LAWS NOW EXISTING OR THAT MAY SUBSEQUENTLY BE ENACTED PROVIDING FOR (I) ANY APPRAISEMENT BEFORE SALE OF ANY PORTION OF THE MORTGAGED PROPERTY, (II) ANY EXTENSION OF THE TIME FOR THE ENFORCEMENT OF THE COLLECTION OF THE INDEBTEDNESS OR THE CREATION OR EXTENSION OF A PERIOD OF REDEMPTION FROM ANY SALE MADE IN COLLECTING SUCH DEBT OR (III) EXEMPTION OF THE MORTGAGED PROPERTIES FROM ATTACHMENT, LEVY OR SALE UNDER EXECUTION OR EXEMPTION FROM CIVIL PROCESS. EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULL EXTENT THE MORTGAGOR MAY DO SO, THE MORTGAGOR AGREES THAT THE MORTGAGOR WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY REQUIREMENTS OF LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY, EXEMPTION, EXTENSION, REINSTATEMENT OR REDEMPTION, OR REQUIRING FORECLOSURE OF THIS MORTGAGE BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER AND THE MORTGAGOR, FOR THE MORTGAGOR AND ITS SUCCESSORS AND ASSIGNS, AND FOR ANY AND ALL PERSONS EVER CLAIMING ANY INTEREST IN THE MORTGAGED PROPERTIES, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES AND RELEASES ALL RIGHTS OF REINSTATEMENT, REDEMPTION, VALUATION, APPRAISEMENT STAY OF EXECUTION, NOTICE OF ELECTION TO MATURE OR DECLARE DUE THE WHOLE OF THE SECURED INDEBTEDNESS AND MARSHALLING IN THE EVENT OF FORECLOSURE OF THE LIENS HEREBY CREATED.

Section 9.3. Assignment of Rents. Notwithstanding provisions hereof relating to the assignment of rents, Administrative Agent shall not exercise its right to receive such rents until it has taken possession, to the extent such possession is required by any applicable Requirement of Law to exercise such right.

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Section 9.4. Certain Insurance Disclosures. Pursuant to the Illinois Collateral Protection Act and the Illinois Financial Institution Insurance Sales Law, Administrative Agent hereby notifies Mortgagor as follows: You may obtain insurance required in connection with your loan or extension of credit from any insurance agent, broker, or firm that sells such insurance, provided the insurance requirements in connection with your loan are otherwise complied with. Your choice of insurance provider will not affect our credit decision or your credit terms. Unless you provide us with evidence of the insurance coverage required by your agreements with us, we may purchase insurance at your expense to protect our interest in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreements. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

Section 9.5. Business Purposes. Mortgagor certifies, represents and warrants to the Administrative Agent that the indebtedness secured by this Mortgage is a “**business purpose loan**” as provided in 815 ILCS 4/1(c).

Section 9.6. Illinois Mortgage Foreclosure Law. The Administrative Agent shall be entitled to the following benefits, among others, pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101):

(i) Benefits to Act. The Mortgagor and the Administrative Agent shall have the benefit of all of the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101), including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101) may be repealed, the Administrative Agent shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(ii) Insurance. Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of the Administrative Agent, or to confer authority upon the Administrative Agent to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Administrative Agent shall continue in the Administrative Agent as judgment creditor or the Administrative Agent until confirmation of sale.

(iii) Protective Advances. All advances, disbursements and expenditures made by the Administrative Agent before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings authorized by the Mortgage or by the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101) (collectively, “**Protective Advances**”), shall

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have the benefit of all applicable provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101). All Protective Advances shall be additional Obligations, and shall become immediately due and payable without notice and with interest thereon from the date of the advance. The Mortgage shall be a Lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15 1302 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101). All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101), apply to and be included in:

(A) determination of the amount of Obligations by the Mortgage at any time;

(B) the Obligations found due and owing to the Administrative Agent in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Obligations becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(C) if right of redemption has not been waived by the Mortgagor in the Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15 1603 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101);

(D) determination of amount deductible from sale proceeds pursuant to Section 5/15 1512 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101);

(E) application of income in the hands of any receiver or the Administrative Agent in possession; and

(F) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15 1508 and Section 5/15 1511 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101).

## ARTICLE X

### Special Michigan Provisions

Section 10.1. Inconsistencies. With respect to the Property located in the state of Michigan, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.



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Section 10.2. Statutory Waste. The failure of Mortgagor to pay taxes or assessments assessed against the Properties or any installment thereof, or any premiums payable with respect to any insurance policy covering the Properties, shall constitute waste as provided by Michigan Compiled Laws, 1948, as amended, Section 600.2927. Mortgagor hereby consents to the appointment of a receiver under said statute should Administrative Agent elect to seek such relief.

Section 10.3. Future Advances. This Mortgage is a "Future Advance Mortgage" under MCLA 565.901 *et seq.* All future advances under the indebtedness secured hereby, this Mortgage and Loan Documents shall have the same priority as if the future advance was made on the date that this Mortgage was recorded. This Mortgage shall secure all indebtedness of Mortgagor, its successors and permitted assigns under the indebtedness secured hereby, this Mortgage or any of the Loan Documents, whenever incurred, such indebtedness to be due at the times provided in the documents and instruments governing the indebtedness secured hereby and in this Mortgage. Notice is hereby given that the indebtedness secured hereby may increase as a result of any defaults hereunder by Mortgagor due to, for example, and without limitation, unpaid interest or late charges, unpaid taxes, assessments or insurance premiums which Administrative Agent elects to advance, defaults under leases that Administrative Agent elects to cure, attorney fees or costs incurred in enforcing the Loan Documents or other expenses incurred by Administrative Agent in protecting the Properties, the security of this Mortgage or Administrative Agent's rights and interests.

Section 10.4. Recordable Events. The provisions set forth in this Mortgage are not intended to evidence an additional recordable event, as may be proscribed by Act 459 of the Public Acts of Michigan of 1996, but rather are included in this Mortgage for purposes of complying with any applicable Requirement of Law.

Section 10.5. Assignment. Mortgagor, pursuant to Act No. 210 of Michigan Public Acts of 1953, as amended, does hereby sell, assign, transfer and set over to Administrative Agent all of its right, title and interest in and to all leases, subleases, tenancy, occupancy, rental, use, sale or license agreements (hereinafter in this Section collectively referred to as "**leases**"), existing as of the date hereof, or hereinafter executed, covering all or any part of the Properties, together with any and all extensions and renewals of any of said leases, and also together with any and all guarantees of the lessee's obligations under said leases, and any and all extensions and renewals thereof, the rents, accounts, issues, income, profits, proceeds, security deposits and any other payments now owing or which shall hereafter become owing by virtue of all of said leases, all or any part of the oil and gas located in, on or under oil and gas properties, and all or any of the rents and profits from oil and gas properties, and the income from the sales of oil and gas produced or to be produced from oil and gas properties (in accordance with MCLA 565.81 *et seq.*), and all extensions, amendments and renewals thereof, and all moneys payable thereunder (herein sometimes collectively called the "**Rents**"), to have and to hold unto the Administrative Agent as security for the indebtedness secured hereby. NOTICE OF ABSOLUTE ASSIGNMENT OF RENTS: (a) Mortgagor acknowledges and agrees that the assignment of rents hereunder to Administrative Agent is and is intended to be an absolute present assignment of rents pursuant to MCLA 554.231 *et seq.* and MCLA 565.81 *et seq.* and that as such, upon the occurrence of a default and the giving by Administrative Agent to Mortgagor of written notice that Mortgagor shall have no further right to collect or otherwise receive such Rents

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(collectively, the “**Michigan Pre-Rent Collection Requirements**”), but not prior thereto, and without any other any action by Administrative Agent, Mortgagor shall have no further right to collect or otherwise receive such Rents and that such Rents will be the absolute and sole property of Administrative Agent pursuant to said statute, (b) any Rents collected or received by Mortgagor subsequent to such default shall be held in trust by Mortgagor for the benefit of Administrative Agent and Mortgagor shall have no right thereto or interest therein, and (c) such Rents, as the sole and absolute property of Administrative Agent, will not under any circumstances be available to Mortgagor or any trustee of Mortgagor in any bankruptcy proceeding. This assignment shall continue and remain in full force and effect during any foreclosure proceedings relating to this Mortgage and the period of redemption, if any, and until all sums secured by this Mortgage, together with interest thereon, shall have been paid in full. If the entire balance secured hereunder shall be bid by Administrative Agent at the foreclosure sale (by cash or otherwise) or a third party at such sale, said assignment shall nonetheless continue for the benefit of the successful bidder, with any Rent collected by Administrative Agent, purchaser at the foreclosure sale or their successors (net of operating expenses actually paid) to be applied in reduction of the redemption price. In the event of any default under the indebtedness secured hereby, this Mortgage or the other Loan Documents, Administrative Agent shall have the full right and power, after compliance with the Michigan Pre-Rent Collection Requirements, to collect the assigned Rents, income security deposits, issues, profits and proceeds by demand, suit or otherwise. All monies received by Administrative Agent pursuant to said assignment shall be applicable at the option of Administrative Agent in the manner hereinafter provided for the use of such funds, if paid to a receiver appointed to manage the Properties or in the manner hereinafter provided for the application of proceeds from sale of the Properties in the event of a foreclosure. Mortgagor will not, without Administrative Agent’s prior written consent, make any lease of the Properties except for actual occupancy by the lessee thereunder. Subject to the Michigan Pre-Rent Collection Requirements, Mortgagor directs and instructs any and all payors of Rents to pay to Administrative Agent all of the Rents until such time as such payors have been furnished with evidence that all secured indebtedness has been paid and that this Mortgage has been released. Mortgagor agrees that no payors of Rents shall have any responsibility for the application of any funds paid to Administrative Agent.

Section 10.6. WARNING. THIS MORTGAGE CONTAINS A POWER OF SALE AND UPON A MATURITY EVENT OF DEFAULT MAY BE FORECLOSED BY ADVERTISEMENT. IN FORECLOSURE BY ADVERTISEMENT, NO HEARING IS INVOLVED AND THE ONLY NOTICE REQUIRED IS TO BE PUBLISHED NOTICE IN A LOCAL NEWSPAPER AND TO POST A COPY OF THE NOTICE ON THE PROPERTY. IF THIS MORTGAGE IS FORECLOSED BY ADVERTISEMENT, MORTGAGOR HEREBY VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY WAIVES ALL RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE STATE OF MICHIGAN AND THE CONSTITUTION AND LAWS OF THE UNITED STATES, TO ALL NOTICE AND A HEARING IN CONNECTION WITH THE ABOVE MENTIONED FORECLOSURE BY ADVERTISEMENT, EXCEPT AS SET FORTH IN THE MICHIGAN STATUTE PROVIDING FOR FORECLOSURE BY ADVERTISEMENT.

## ARTICLE XI

### Special Missouri Provisions

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Section 11.1. Inconsistencies. With respect to the Property located in the state of Missouri, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise

Section 11.2. Notice of Redemption and Redemption Rights. The Mortgagor shall be entitled to the following benefits, among others, pursuant to the Missouri Revised Statutes (RSMO Chapter 443), which provides:

No party shall have the right of redeeming from any such sale as set forth in RSMO 443.410 unless he shall have given the written notice specified in said section and shall within twenty days after such sale give security to the satisfaction of the circuit court of the county in which the land is located for the payment of the interest on the debt or obligation secured by the Mortgage under which the sale is made to accrue within such year after the sale is made, and for the payment in full of the legal charges and costs of the sale, and for the payment of all interest accrued prior to the sale or thereafter which the purchaser at the sale or his representatives or assigns may pay on any prior encumbrance on the land, as well as the interest which may accrue thereon during such year allowed for redemption whether so paid or not and all taxes and assessments and interest and costs thereon whether general or special accrued or accruing during such year allowed for redemption and whether paid by the purchaser at the sale or not together with interest at rate of six percent per annum on all sums so paid by the purchaser or those claiming under him and for damages for all waste committed or suffered by the party giving such security or those claiming under him during such year unless said property is so redeemed, and it shall be necessary to pay for such redemption all such sums to which the purchaser or those claiming under him should be entitled with interest as aforesaid. Said security shall be by bond executed by the person or persons so entitled to redeem with at least one good surety in a sum amply sufficient to cover the aggregate of all said sums exclusive of the principal debt or obligation, but including damages and interest, to be so absolutely paid in event redemption is not made and the aggregate of all such shall be the measure of damages to be paid in satisfaction of said bond if such redemption is not made. RSMO 443.420.

Deeds of trust in the nature of mortgages of lands may, in addition to being foreclosable by suit, be also foreclosed by a trustee's sale at the option of the holder of the debt or obligation thereby secured and the Mortgaged Property sold by the Trustee or his successor in the same manner and in all respects as in case of mortgages with power of sale; and all real estate which may be sold under any such power of sale in a Mortgage hereafter made and which at such sale shall be brought in by the holder of such debt or obligation or by any other person for such holder shall be subject to redemption by the grantor in such Mortgage or his heirs, devisees, executors, administrators, grantees or assigns at any time within one year from the date of the sale; provided, however, that such person so entitled to redeem shall give written notice at the sale or within ten days

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before the date advertised for the sale to the person making or who is to make the sale of the purpose to redeem if the sale and purchase are so made; and provided further, the said grantor, his representatives, grantees or assigns to make the redemption shall within the year pay the debt and interest or other obligation secured by such Mortgage and to accrue thereon together with all sums paid out by any holder thereof or purchaser at such sale or holder of the rights of such purchaser for interest and principal and either of any prior encumbrances, and for taxes and assessments and all legal charges and costs of the sale. RSMO 443.410.

## ARTICLE XII

### Special Montana Provisions

Section 12.1. Inconsistencies. With respect to the Property located in the state of Montana, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 12.2. Special Montana Provisions. MORTGATOR REPRESENTS, WARRANTS AND COVENANTS THAT THE AGGREGATE LAND AREA OF THE FACILITY SITE AND RELATED APPURTENANCES LOCATED IN THE STATE OF MONTANA IS LESS THAN FORTY (40) ACRES.

## ARTICLE XIII

### Special Nebraska Provisions

Section 13.1. Inconsistencies. With respect to the Property located in the state of Nebraska, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 13.2. Deed of Trust. This Mortgage shall constitute a trust deed under the Trust Deeds Act (R.R.S. Neb. §§ 76-1001 et seq.). Mortgagor expressly subjects the Property to the Trust Deeds Act, and the Trustee and Administrative Agent shall be accorded all the rights, powers and remedies of a trustee and a beneficiary as provided therein. All rights, powers and remedies of the Trust Deeds Act are hereby incorporated by reference as if the rights, powers and remedies were expressly provided herein, with Administrative Agent as a "beneficiary,"



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Mortgagor as a “trustor,” Trustee as a “trustee,” this Mortgage as a “trust deed” and the Property as “trust property.”

Section 13.3. **MORTGAGOR UNDERSTANDS THAT (A) THIS MORTGAGE IS A TRUST DEED AND NOT A MORTGAGE (UNLESS ADMINISTRATIVE AGENT ELECTS TO FORECLOSE THIS MORTGAGE AS A MORTGAGE), AND (B) THE POWER OF SALE PROVIDED FOR IN THIS MORTGAGE PROVIDES SUBSTANTIALLY DIFFERENT RIGHTS, DUTIES AND OBLIGATIONS ON MORTGAGOR THAN A MORTGAGE IN EVENT OF DEFAULT OR BREACH OF AN OBLIGATION.**

## ARTICLE XIV

### Special New Jersey Provisions

Section 14.1. Inconsistencies. With respect to the Property located in the state of New Jersey, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 14.2. Mortgagor. Notwithstanding Mortgagor being captioned as above in this Mortgage, the Mortgagor of the Other Mortgaged Properties located in New Jersey is: **BKEP MATERIALS, L.L.C.** (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company.

Section 14.3. Remedies. All references in this Mortgage to self help, non-judicial foreclosure and power of sale shall be deemed to apply to the Other Mortgaged Properties located in New Jersey only to if and to the extent permitted by New Jersey law. If any provision of this Mortgage is inconsistent with any applicable provision of New Jersey law, the provision of New Jersey law shall take precedence over the provisions of this Mortgage as affects the Other Mortgaged Properties located in New Jersey, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with New Jersey law.

Section 14.4. Non-Merger. The rights of the Administrative Agent set forth herein shall, to the extent not prohibited by law, extend to the period from and after the filing of any suit to foreclose the lien of this Mortgage, the entry of judgment and any subsequent period including any period allowed by law for the redemption of the Other Mortgaged Properties located in New Jersey after any foreclosure sale, and interest shall accrue on the judgment in the same manner and at the same rate as provided in the Credit Agreement, subject only to the usury savings clauses of the Credit Agreement and this Mortgage, until Administrative Agent has received irrevocable payment in full of all Obligations.

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Section 14.5. Copy of Mortgage. Borrower represents and warrants that it has received a true copy of this Mortgage without charge.

Section 14.6. Modification Priority. This Mortgage is subject to “modification” as such term is defined in P.L. 1985 c.353 (N.J.S.A. 46-9-8.1 et seq.) and shall be subject to the priority provisions thereof.

Section 14.7. Fixture Financing Statement. Without limiting anything in Section 1.2, this Mortgage constitutes a security agreement under the New Jersey Uniform Commercial Code and shall be deemed to also constitute a fixture financing statement.

Section 14.8. Future Advances. Without limiting anything in this Mortgage, this Mortgage is given for the purpose of creating a lien on real property in order to secure existing indebtedness, and also future advances, whether made before or after default or maturity or other similar events, to the same extent as if such future advances were made on the date of the execution hereof, although there may be no advance made at the time of the execution hereof and although there may be no indebtedness outstanding at the time any advance is made. The types of future advances secured by and having priority under this Mortgage shall include, without limitation, (i) advances and re-advances of principal under the Credit Agreement and (ii) disbursements and other advances for the payment of taxes, assessments, maintenance charges, insurance premiums or costs relating to the Other Mortgaged Properties located in New Jersey, for the discharge of liens having priority over the lien of this Mortgage, for the curing of waste of the Other Mortgaged Properties located in New Jersey and for the payment of service charges and expenses incurred by reason of default and including late charges, attorney’s fees and court costs, together with interest thereon. The lien of this Mortgage, as to third persons with or without actual knowledge thereof, shall be valid as to all such indebtedness and future advances, from the date of recordation.

Section 14.9. Deficiency. Mortgagor waives all rights or defenses arising by reason of any “one action” and any Requirement of Law prohibiting the Administrative Agent from making a claim for deficiency, to the extent the Administrative Agent is otherwise entitled to a claim for deficiency, whether before or after the Administrative Agent’s commencement or completion of any foreclosure action or any other action to exercise its remedies hereunder or otherwise available at a law or in equity.

Section 14.10. Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY ANY APPLICABLE REQUIREMENT OF LAW, MORTGAGOR AND ADMINISTRATIVE AGENT EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT OR PROCEEDING RELATING TO THIS MORTGAGE AND FOR ANY COUNTERCLAIM BROUGHT THEREIN. MORTGAGOR HEREBY WAIVES ALL RIGHTS TO INTERPOSE ANY COUNTERCLAIM IN ANY SUIT BROUGHT BY ADMINISTRATIVE AGENT HEREUNDER AND ALL RIGHTS TO HAVE ANY SUCH SUIT CONSOLIDATED WITH ANY SEPARATE SUIT, ACTION OR PROCEEDING.

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Section 14.11. No Reduction. No taxes paid by or on account of the Other Mortgaged Properties in New Jersey shall serve to reduce the amount of indebtedness secured by this instrument.

Section 14.12. New Jersey Environmental Provisions.

(a) Mortgagor represents and warrants that, to the best of Mortgagor's knowledge after due inquiry and investigation, no lien has attached to the Other Mortgaged Properties in New Jersey as a result of any action by the New Jersey Department of Environmental Protection (which, together with its successors, shall be called herein the "NJDEP") or its designee pursuant to the New Jersey Spill Compensation Fund as such term is defined in the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (said Spill Compensation and Control Act together with any amendments or revisions thereof and any regulations promulgated pursuant thereto being hereinafter collectively called the "**Spill Act**") expending monies from said fund to pay for "cleanup and removal costs" or "natural resources" damages as a result of any "discharge" of any "hazardous substances" on or at the Other Mortgaged Properties in New Jersey, as such terms are defined in the Spill Act.

(b) If a lien that has priority over all other claims or liens which have been previously filed is filed against the Other Mortgaged Properties in New Jersey pursuant to the Spill Act, N.J.S.A. 58:10-23.11g (c)(2), Mortgagor shall immediately either (i) pay the claim and remove the lien from the Other Mortgaged Properties in New Jersey, or (ii) furnish (A) a bond satisfactory to Agent and the title insurance company which insured the priority of the lien of this Mortgage in the amount of the claim out of which the lien arises, (B) a cash deposit in the amount of the claim out of which the lien arises, or (C) other security reasonably satisfactory to Agent in an amount sufficient to discharge the claim out of which the lien arises.

(c) In connection with a "termination of ownership or operations" (as such term is used in the New Jersey Industrial Site Recovery Act, as amended, N.J.S.A. 13:1K-6 et seq. ("ISRA")) relating to Mortgagor or any tenants at any time occupying any portion of the Other Mortgaged Properties in New Jersey, Mortgagor, shall promptly provide Agent with:

(i) a Response Action Outcome (as such term is used in ISRA, including at N.J.A.C. 7:26C-6.2) issued by a Licensed Site Professional; or

(ii) a Remedial Action Work Plan (as such term is used in ISRA) certified by a Licensed Site Professional; or

(iii) a Remediation Certification (as such term is used in ISRA, including at N.J.A.C. 7:26B-1.7(b)) certified by a Licensed Site Professional permitting the termination.

(d) Nothing in this subsection (c) shall be construed as limiting Mortgagor's obligation to otherwise comply with ISRA. In particular, Mortgagor's obligation to comply with ISRA shall also specifically apply to a sale, transfer, closure or termination of operations associated with any foreclosure action, including, without limitation, a foreclosure action brought with respect to this Mortgage.

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(e) If Mortgagor complies with subsection (c) of this Section by obtaining a certified Remedial Action Work Plan or Remediation Certification, Mortgagor shall promptly implement and prosecute to completion or cause to be so implemented and prosecuted the Remedial Action Work Plan or the requirements of the Remediation Certification, as the case may be, in accordance with the schedules contained therein or as may be otherwise required by ISRA. Mortgagor expressly understands and acknowledges that Mortgagor's compliance with the provisions of this subsection (d) may require Mortgagor to expend funds or do acts after the expiration or termination of the term of one or more leases. Mortgagor shall expend such funds and do such acts and shall not be excused therefrom even though the term of the relevant lease shall have previously expired or been terminated and notwithstanding any provisions in any such lease or in ISRA placing the burden of compliance on the tenant.

## ARTICLE XV

### Special New Mexico Provisions

Section 15.1. Inconsistencies. With respect to the Property located in the state of New Mexico, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 15.2. Deed of Trust Act; Waiver of Right of Reinstatement. Mortgagor expressly subjects the Property to the terms of the Deed of Trust Act, Section 48-10-1 through 48-10-21 NMSA 1978, as amended from time to time (the "Deed of Trust Act"). All the rights, powers and remedies of a trustee and beneficiary as provided in the Deed of Trust Act are incorporated by reference in this Mortgage as if the rights, powers and remedies were expressly provided in this Mortgage. Mortgagor represents and warrants to Administrative Agent that the Mortgaged Property as provided in this Mortgage qualifies as trust real estate as defined in the Deed of Trust Act. Mortgagor intends that Trustee and Administrative Agent receive through the Loan Documents and this Mortgage all the rights, powers and remedies accorded a trustee and a Administrative Agent as provided in the Deed of Trust Act, whether or not such rights, powers and remedies are expressly granted or reserved in the Loan Documents or this Mortgage. To the extent not prohibited by law, Mortgagor expressly waives any right of Mortgagor to reinstate this Mortgage as provided in Section 16 of the Deed of Trust Act if payment of any Indebtedness is declared due or accelerated by Administrative Agent.

Section 15.3. Simple Description. As required by Section 14-11-10.1 NMSA 1978, a simple description of the Property is: N/A.

Section 15.4. Impound Account. The impound funds may be applied as provided in Section 8.2 of the Credit Agreement despite any provisions of Section 48-7-8 NMSA 1978.

Section 15.5. Limitation on Indemnity. To the extent, if at all, 56-7-1 NMSA 1978, as amended, is applicable, any agreement to indemnify, hold harmless, insure or defend another



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party contained herein or in any related documents will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of any indemnitee, its officers, employees or agents.

## ARTICLE XVI

### Special Ohio Provisions

Section 16.1. Inconsistencies. With respect to the Property located in the state of Ohio, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 16.2. No Notice. Mortgagor covenants not to issue a notice pursuant to Section 5301.232(c) of the Ohio Revised Code either to Administrative Agent or any other Secured Parties until all Obligations have been satisfied in full.

Section 16.3. Powers of Administrative Agent. Administrative Agent or the other Secured Parties, at their option, are authorized and empowered to do all things provided to be done by a mortgagee under Section 1311.14 of the Ohio Revised Code, and any present or future amendments or supplements thereto, for the protection of Lender's interest in the Other Mortgaged Properties in the State of Ohio.

## ARTICLE XVII

### Special Pennsylvania Provisions

Section 17.1. Inconsistencies. With respect to the Property located in the commonwealth of Pennsylvania, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 17.2. Open End Mortgage. This Mortgage is an Open-End Mortgage as defined in Section 8143(f) of Title 42 of the Pennsylvania Consolidated Statutes, as amended (the "**Pennsylvania Act**") and as such, is entitled to the benefits of the Pennsylvania Act. Mortgagor intends that, in addition to any other debt or obligations secured hereby, this Mortgage shall secure unpaid balances of advances and other extensions of credit made after this Mortgage is left for record with the Recorder's Office of [Northumberland County, Pennsylvania and the Recorder's Office of Berks County, Pennsylvania,] whether such advances are made pursuant to

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an obligation of Administrative Agent and/or Secured Parties and the Borrower or otherwise. The maximum amount of unpaid indebtedness (which shall consist of unpaid balances after this Mortgage is left for record), which may be outstanding at any time and secured by Property located in Pennsylvania, is equal to \$1,000,000,000.00. In addition to the obligations secured hereby, this Mortgage secures unpaid balances of advances made with respect to the Mortgaged Properties, for the payment of taxes, assessments, maintenance charges, insurance premiums or costs incurred for the protection of the Mortgaged Properties or the lien of this Mortgage and expenses (including but not limited to, costs and attorneys' fees) incurred by Administrative Agent and/or Secured Parties by reason of default by Mortgagor or Borrower under this Mortgage or any of the other Loan Documents. Without limiting the provisions in Article IV hereof, delivery to Administrative Agent of any notice provided for in Section 8143(b) of the Pennsylvania Act (a "Security Limitation Notice") shall relieve Administrative Agent and Secured Parties of any obligation to make any further advance of loan proceeds or other extensions of credit to Mortgagor or Borrower until such time as Administrative Agent notifies Mortgagor and the Loan Parties in writing of Secured Parties' willingness to make further advances or other extensions of credit. Notices sent to Administrative Agent pursuant to the Pennsylvania Act shall be given pursuant to the applicable provisions of this Mortgage.

Section 17.3. **CONFESSION OF JUDGMENT. FOR PURPOSES OF SECURING POSSESSION OF THE PROPERTY TO ADMINISTRATIVE AGENT FOR THE BENEFIT OF ADMINISTRATIVE AGENT AND SECURED PARTIES AND ANY OTHER SECURED PARTY, MORTGAGOR DOES HEREBY AUTHORIZE AND EMPOWER ANY PROTHONOTARY, CLERK OF COURT OR ATTORNEY OF ANY COURT OF RECORD IN THE COMMONWEALTH OF PENNSYLVANIA, AS ATTORNEY FOR MORTGAGOR, AS WELL AS FOR ALL PERSONS CLAIMING UNDER, BY OR THROUGH MORTGAGOR, AFTER THE OCCURRENCE OF DEFAULT, AND THE GIVING BY ADMINISTRATIVE AGENT TO MORTGAGOR OF WRITTEN NOTICE THEREOF, TO SIGN AN AGREEMENT FOR THE ENTERING IN ANY COMPETENT COURT OF AN ACTION IN EJECTMENT FOR THE POSSESSION OF THE PROPERTY TOGETHER WITH THE HEREDITAMENTS AND APPURTENANCES AND ALL EQUIPMENT, PERSONAL PROPERTY AND FIXTURES NOW OR HEREAFTER INSTALLED UPON THE SAME, AGAINST MORTGAGOR AND ALL PERSONS CLAIMING UNDER, BY, OR THROUGH MORTGAGOR, AND THEREIN TO CONFESS JUDGMENT FOR THE RECOVERY OF SUCH POSSESSION BY ADMINISTRATIVE AGENT, FOR WHICH THIS MORTGAGE, OR A COPY THEREOF VERIFIED BY AFFIDAVIT, SHALL BE SUFFICIENT WARRANT; WHEREUPON, IF ADMINISTRATIVE AGENT SO DESIRES, A WRIT OF POSSESSION MAY BE ISSUED FORTHWITH ON SAID JUDGMENT, WITHOUT ANY PRIOR WRIT OR PROCEEDING WHATSOEVER, MORTGAGOR HEREBY RELEASING ADMINISTRATIVE AGENT FROM ALL PERSONS AND DEFECTS WHATSOEVER IN SAID PROCEEDINGS; AND THAT IF FOR ANY REASON, AFTER SUCH ACTION HAS BEEN COMMENCED, THE SAME SHALL BE DISCONTINUED, MARKED SATISFIED OF RECORD OR BE DETERMINED, OR POSSESSION OF THE PROPERTY SHALL REMAIN IN OR BE RESTORED TO MORTGAGOR, ADMINISTRATIVE AGENT SHALL HAVE THE RIGHT, FOR THE SAME DEFAULT OR IN THE EVENT OF ANY SUBSEQUENT**

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**DEFAULT OR DEFAULTS, TO BRING ONE OR MORE FURTHER AMICABLE ACTIONS IN EJECTMENT FOR POSSESSION OF THE PROPERTY.**

**MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL WITH RESPECT TO THIS MORTGAGE, THE NOTES AND ANY OTHER LOAN DOCUMENTS AND MORTGAGOR HEREBY EXPRESSLY WAIVES ITS RIGHT TO NOTICE AND HEARING WITH RESPECT TO THE CONFESSION OF JUDGMENT PROVISIONS SET FORTH IN THIS SECTION.**

## ARTICLE XVIII

### Special Tennessee Provisions

Section 18.1. Inconsistencies. With respect to the Property located in the state of Tennessee, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 18.2. Foreclosure and Sale. Administrative Agent may only proceed with foreclosure after publishing notice of the time and place of such sale at least three (3) different times in a newspaper published in the county in which the Mortgaged Property is located the first of which publications shall be at least twenty (20) days prior to said sale.

## ARTICLE XIX

### Special Utah Provisions

Section 19.1. Inconsistencies. With respect to the Property located in the state of Utah, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 19.2. Trustee. The Utah Trustee is qualified to serve as trustee under the provisions of Section 57-1-21 of the Utah Code Annotated.

Section 20.3 Request for Notice. Pursuant to Section 57-1-26 of the Utah Code Annotated, Mortgagor requests that a copy of any notice of default and a copy of any notice of sale under this instrument be mailed to Mortgagor at the address set forth herein.

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Section 20.4 Mortgage Filed as a Fixture Filing. It is intended that this mortgage is effective as a financing statement filed with the Davis County recorder's office as a fixture filing pursuant to Section 70A-9-502(3) of the Utah Code Annotated. This mortgage indicates the collateral, goods or accounts that it covers. The goods are or are to become fixtures related to the real property and such collateral is related to the real property described on Exhibit A attached hereto. The debtor is the Mortgagor and the secured party is the Administrative Agent or the Secured Parties.

Section 20.5 **FINAL EXPRESSION**. PURSUANT TO SECTION 25-5-4 OF THE UTAH CODE ANNOTATED THIS WRITTEN AGREEMENT IS A FINAL EXPRESSION OF THE AGREEMENT BETWEEN CREDITOR AND DEBTOR AND THE WRITTEN AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

## ARTICLE XX

### Special Virginia Provisions

Section 20.1. Inconsistencies. With respect to the Property located in the Commonwealth of Virginia, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 20.2. Statutory Provisions. Notwithstanding anything contained herein to the contrary, this Mortgage is made under and pursuant to the provisions of the Code of Virginia, Sections 55-59, 55-59.1, 55-59.2, 55-59.3, 55-59.4 and 55-60 as the same may be amended from time to time, and shall be construed to impose and confer upon the parties hereto and the Administrative Agent all the rights, duties and obligations prescribed by said Sections, except to the extent otherwise provided in this Mortgage.

Section 20.3. Limitation of Debt Secured by this Mortgage as to Deed of Trust Mortgaged Properties Located in Virginia. Notwithstanding any other provision of this Mortgage, the maximum amount of the indebtedness secured by this Mortgage as to Deed of Trust Mortgaged Properties located in Virginia is the principal amount of Eight Million Seven Hundred Ninety Two Thousand Four Hundred Six Dollars (\$8,792,406), plus interest, costs and other expenses set forth herein.



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## ARTICLE XXI Special Washington Provisions

Section 21.1. Inconsistencies. With respect to the Property located in the state of Washington, the provisions set forth in this Article shall apply to and be made a part of the Mortgage. In the event of any inconsistencies between the terms and provisions of this Article and the other terms and provisions of this Mortgage, or to the extent, and only to the extent, any of the terms and provisions in this Article conflict with, or are ambiguous when read together with, any of the other terms and provisions of this Mortgage, the provisions of this Article shall govern. Capitalized words and phrases contained in this Article shall have the definition ascribed to them in the main body of the Mortgage, unless the context manifestly requires otherwise.

Section 21.2. Property Use. Mortgagor warrants and covenants that the Property is not used principally for agricultural purposes and that the indebtedness secured by this Mortgage was not made primarily for personal, family, or household purposes. The indebtedness secured by this Mortgage is primarily for commercial, investment or business purposes, and not for personal, family or household purposes, within the meaning of RCW 19.52.080.

Section 21.3. Deficiency Judgment. To the extent permitted by any applicable Requirement of Law, Trustee or Administrative Agent may obtain a deficiency judgment if the net sales proceeds of any sale of the Property under the power of sale granted by this Mortgage are insufficient to pay in full all of the obligations secured hereby.

Section 21.4. Oral Agreements. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

Section 21.5. Capacity of Mortgagee. Notwithstanding anything to the contrary herein, Grantor agrees and acknowledges that Administrative Agent is acting under this Mortgage not in its individual capacity but solely as "Administrative Agent" for the Lenders under the Credit Agreement. Administrative Agent agrees and acknowledges that, in its capacity as the beneficiary of this Mortgage, it is solely an agent for the Lenders. As such in the exercise of the rights and duties of the mortgagee or beneficiary under this Mortgage, Administrative Agent shall act solely under the control and direction of the Lenders and be expressly subject to the terms of Credit Agreement."

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The address of Administrative Agent is:

Wells Fargo Bank,  
National Association  
MAC D1109-019  
1525 W. W. T. Harris Blvd, 1st Floor  
Charlotte, NC 28262-8522  
Attention: Erika Myers

The address of Mortgagor is:

201 NW 10<sup>th</sup>, Suite 200  
Oklahoma City, Oklahoma 73103  
Attn: Chief Financial Officer

with a copy to

Wells Fargo Bank, National Association  
MAC T9216-451  
1445 Ross Ave., Suite 4500  
Dallas, TX 75202  
Attention: Jason M. Hicks

The address of California, New Mexico, Texas,  
and Virginia Trustee is:

1445 Ross Ave., Suite 4500  
Dallas, TX 75202

The address of Missouri Trustee is:

c/o St. Louis Title, LLC  
7701 Forsyth Boulevard, Suite 200  
Saint Louis, Missouri 63105

The address of Montana Trustee is:

204 North 29th Street  
Billings, MT 59101

The address of Nebraska Trustee is:

106 W. 17th Street, Suite 1800  
Kansas City, MO 6410

The address of the Nevada Trustee is:

2490 Paseo Verde Parkway, Suite 100  
Henderson, NV 89074

The address of the Tennessee Trustee is:

c/o Fidelity National Title Group  
6840 Carothers Parkway  
Franklin, TN 37067

The address of the Utah Trustee is:

345 East Broadway  
Salt Lake City, Utah 84111

The address of the Washington Trustee is:

501 South Bernard, 1<sup>st</sup> Floor  
Spokane, WA 99204

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IN WITNESS WHEREOF, Mortgagor, acting by and through its duly authorized officer, has executed this Mortgage on the date of its acknowledgment.

**BKEP CRUDE, L.L.C.** (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company

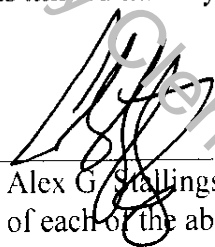
**BKEP MATERIALS, L.L.C.** (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company

**BKEP ASPHALT, L.L.C.** (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company

**BKEP PIPELINE, L.L.C.** (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company

**BKEP FIELD SERVICES, L.L.C.**, a Delaware limited liability company

**BKEP SERVICES LLC** (formerly known as BKEF Field Services II, L.L.C.), a Texas limited liability company,

By:   
Alex G. Stallings, Chief Financial Officer  
of each of the above entities

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## ACKNOWLEDGMENT (BKEP CRUDE, L.L.C.)

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

BE IT REMEMBERED THAT I, the undersigned authority, a notary public duly qualified, commissioned, sworn and acting in and for the county and state aforesaid, and being authorized in such county and state to take acknowledgments, hereby certify that, on this 26th day of June, 2013, there personally appeared before me: Alex G. Stallings, Chief Financial Officer of **BKEP CRUDE, L.L.C.** (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company, such limited liability company being a party to the annexed and foregoing instrument, who stated that he was duly authorized in his capacity to execute the said foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Montana, Nebraska, New Jersey, New Mexico, Nevada, Oklahoma, Ohio, Texas, Utah, or Washington	The foregoing instrument was acknowledged before me on this 26th day of June, 2013, by Alex G. Stallings, as Chief Financial Officer of <b>BKEP CRUDE, L.L.C.</b> (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company, on behalf of said limited liability company. Witness my hand and official seal.
California	On June 26, 2013, before me, Alex G. Stallings personally appeared, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.  I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
Michigan and Pennsylvania	On this 26th day of June, 2013, before me, a Notary Public, personally appeared Alex G. Stallings, who acknowledged himself to be the Chief Financial Officer of <b>BKEP CRUDE, L.L.C.</b> (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company, on behalf of said limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as such officer.



# UNOFFICIAL COPY

Missouri	<p>On this 26th day of June, 2013, before me, a Notary Public in and for said State, personally appeared Alex G. Stallings, to me personally known, who being by me duly sworn did say that he is the Chief Financial Officer of <b>BKEP CRUDE, L.L.C.</b> (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company, on behalf of said limited liability company, and that said instrument was signed on behalf of said limited liability company, and said Alex G. Stallings acknowledged to me that he executed the same for the purposes therein stated, and as his free act and deed and as the free act and deed of said limited liability company.</p>
Tennessee	<p>Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Alex G. Stallings, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the Chief Financial Officer of <b>BKEP CRUDE, L.L.C.</b> (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company, on behalf of said limited liability company, the within named Mortgagor, and that Alex G. Stallings as such Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Financial Officer.</p>
Virginia	<p>I, _____, a Notary Public in and for the County and State aforesaid, hereby certify that Alex G. Stallings, who identified himself by means of a driver's license (photo identification), and who upon oath acknowledged himself to be Chief Financial Officer of <b>BKEP CRUDE, L.L.C.</b> (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company, on behalf of said limited liability company, the within named Mortgagor, acknowledged the foregoing Credit Line Fee and Leasehold Deed of Trust for the purposes therein contained as the Chief Financial Officer of <b>BKEP CRUDE, L.L.C.</b> (formerly SemGroup Energy Partners, L.L.C.), a Delaware limited liability company.</p>

# UNOFFICIAL COPY

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the City of Dallas, Dallas County, Texas.

[STAMP]

*Lynn A. Little*  
NOTARY PUBLIC, in and for the State of Texas  
residing at Dallas, Dallas County, Texas



Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
My commission number: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## ACKNOWLEDGMENT (BKEP MATERIALS, L.L.C.)

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

BE IT REMEMBERED THAT I, the undersigned authority, a notary public duly qualified, commissioned, sworn and acting in and for the county and state aforesaid, and being authorized in such county and state to take acknowledgments, hereby certify that, on this 26th day of June, 2013, there personally appeared before me: Alex G. Stallings, Chief Financial Officer of **BKEP MATERIALS, L.L.C.** (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company, such limited liability company being a party to the annexed and foregoing instrument, who stated that he was duly authorized in his capacity to execute the said foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Montana, Nebraska, New Jersey, New Mexico, Nevada, Oklahoma, Ohio, Texas, Utah, or Washington	The foregoing instrument was acknowledged before me on this 26th day of June, 2013, by Alex G. Stallings, as Chief Financial Officer of <b>BKEP MATERIALS, L.L.C.</b> (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company, on behalf of said limited liability company. Witness my hand and official seal.
California	On June 26, 2013, before me, Alex G. Stallings personally appeared, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.  I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
Michigan and Pennsylvania	On this 26th day of June, 2013, before me, a Notary Public, personally appeared Alex G. Stallings, who acknowledged himself to be the Chief Financial Officer of <b>BKEP MATERIALS, L.L.C.</b> (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company, on behalf of said limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited

## UNOFFICIAL COPY

	liability company by himself as such officer.
Missouri	On this 26th day of June, 2013, before me, a Notary Public in and for said State, personally appeared Alex G. Stallings, to me personally known, who being by me duly sworn did say that he is the Chief Financial Officer of <b>BKEP MATERIALS, L.L.C.</b> (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company, on behalf of said limited liability company, and that said instrument was signed on behalf of said limited liability company, and said Alex G. Stallings acknowledged to me that he executed the same for the purposes therein stated, and as his free act and deed and as the free act and deed of said limited liability company.
Tennessee	Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Alex G. Stallings, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the Chief Financial Officer of <b>BKEP MATERIALS, L.L.C.</b> (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company, on behalf of said limited liability company, the within named Mortgagor, and that Alex G. Stallings as such Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Financial Officer.
Virginia	I, _____, a Notary Public in and for the County and State aforesaid, hereby certify that Alex G. Stallings, who identified himself by means of a driver's license (photo identification), and who upon oath acknowledged himself to be Chief Financial Officer of <b>BKEP MATERIALS, L.L.C.</b> (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company, on behalf of said limited liability company, the within named Mortgagor, acknowledged the foregoing Credit Line Fee and Leasehold Deed of Trust for the purposes therein contained as the Chief Financial Officer of <b>BKEP MATERIALS, L.L.C.</b> (formerly SemMaterials Energy Partners, L.L.C., a Delaware limited liability company), a Texas limited liability company.



# UNOFFICIAL COPY

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the City of Dallas, Dallas County, Texas.

*Lynn A. Little*

[STAMP]

NOTARY PUBLIC, in and for the State of Texas  
residing at Dallas, Dallas County, Texas



Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
My commission number: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## ACKNOWLEDGMENT (BKEP ASPHALT, L.L.C.)

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

BE IT REMEMBERED THAT I, the undersigned authority, a notary public duly qualified, commissioned, sworn and acting in and for the county and state aforesaid, and being authorized in such county and state to take acknowledgments, hereby certify that, on this 26th day of June, 2013, there personally appeared before me: Alex G. Stallings, Chief Financial Officer of **BKEP ASPHALT, L.L.C.** (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company, such limited liability company being a party to the annexed and foregoing instrument, who stated that he was duly authorized in his capacity to execute the said foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Montana, Nebraska, New Jersey, New Mexico, Nevada, Oklahoma, Ohio, Texas, Utah, or Washington	The foregoing instrument was acknowledged before me on this 26th day of June 2013, by Alex G. Stallings, as Chief Financial Officer of <b>BKEP ASPHALT, L.L.C.</b> (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company, on behalf of said limited liability company. Witness my hand and official seal.
California	On June 26, 2013, before me, Alex G. Stallings personally appeared, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.  I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
Michigan and Pennsylvania	On this 26th day of June, 2013, before me, a Notary Public, personally appeared Alex G. Stallings, who acknowledged himself to be the Chief Financial Officer of <b>BKEP ASPHALT, L.L.C.</b> (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company, on behalf of said limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as such officer.

# UNOFFICIAL COPY

Missouri	<p>On this 26th day of June, 2013, before me, a Notary Public in and for said State, personally appeared Alex G. Stallings, to me personally known, who being by me duly sworn did say that he is the Chief Financial Officer of <b>BKEP ASPHALT, L.L.C.</b> (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company, on behalf of said limited liability company, and that said instrument was signed on behalf of said limited liability company, and said Alex G. Stallings acknowledged to me that he executed the same for the purposes therein stated, and as his free act and deed and as the free act and deed of said limited liability company.</p>
Tennessee	<p>Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Alex G. Stallings, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the Chief Financial Officer of <b>BKEP ASPHALT, L.L.C.</b> (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company, on behalf of said limited liability company, the within named Mortgagor, and that Alex G. Stallings as such Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Financial Officer.</p>
Virginia	<p>I, _____, a Notary Public in and for the County and State aforesaid, hereby certify that Alex G. Stallings, who identified himself by means of a driver's license (photo identification), and who upon oath acknowledged himself to be Chief Financial Officer of <b>BKEP ASPHALT, L.L.C.</b> (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company, on behalf of said limited liability company, the within named Mortgagor, acknowledged the foregoing Credit Line Fee and Leasehold Deed of Trust for the purposes therein contained as the Chief Financial Officer of <b>BKEP ASPHALT, L.L.C.</b> (formerly SGLP Asphalt, L.L.C.), a Texas limited liability company.</p>

# UNOFFICIAL COPY

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the City of Dallas, Dallas County, Texas.

*Lynn A. Little*

[STAMP]

NOTARY PUBLIC, in and for the State of Texas  
residing at Dallas, Dallas County, Texas



Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
My commission number: \_\_\_\_\_

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## ACKNOWLEDGMENT (BKEP PIPELINE, L.L.C.)

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

BE IT REMEMBERED THAT I, the undersigned authority, a notary public duly qualified, commissioned, sworn and acting in and for the county and state aforesaid, and being authorized in such county and state to take acknowledgments, hereby certify that, on this 26th day of June 2013, there personally appeared before me: Alex G. Stallings, Chief Financial Officer of **BKEP PIPELINE, L.L.C.** (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company, such limited liability company being a party to the annexed and foregoing instrument, who stated that he was duly authorized in his capacity to execute the said foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Montana, Nebraska, New Jersey, New Mexico, Nevada, Oklahoma, Ohio, Texas, Utah, or Washington	The foregoing instrument was acknowledged before me on this 26th day of June, 2013, by Alex G. Stallings, as Chief Financial Officer of <b>BKEP PIPELINE, L.L.C.</b> (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company, on behalf of said limited liability company. Witness my hand and official seal.
California	On June 26, 2013, before me, Alex G. Stallings personally appeared, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.  I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
Michigan and Pennsylvania	On this 26th day of June, 2013, before me, a Notary Public, personally appeared Alex G. Stallings, who acknowledged himself to be the Chief Financial Officer of <b>BKEP PIPELINE, L.L.C.</b> (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company, on behalf of said limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited

# UNOFFICIAL COPY

	liability company by himself as such officer.
Missouri	<p>On this 26th day of June, 2013, before me, a Notary Public in and for said State, personally appeared Alex G. Stallings, to me personally known, who being by me duly sworn did say that he is the Chief Financial Officer of <b>BKEP PIPELINE, L.L.C.</b> (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company, on behalf of said limited liability company, and that said instrument was signed on behalf of said limited liability company, and said Alex G. Stallings acknowledged to me that he executed the same for the purposes therein stated, and as his free act and deed and as the free act and deed of said limited liability company.</p>
Tennessee	<p>Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Alex G. Stallings, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the Chief Financial Officer of <b>BKEP PIPELINE, L.L.C.</b> (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company, on behalf of said limited liability company, the within named Mortgagor, and that Alex G. Stallings as such Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Financial Officer.</p>
Virginia	<p>I, _____, a Notary Public in and for the County and State aforesaid, hereby certify that Alex G. Stallings, who identified himself by means of a driver's license (photo identification), and who upon oath acknowledged himself to be Chief Financial Officer of <b>BKEP PIPELINE, L.L.C.</b> (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company, on behalf of said limited liability company, the within named Mortgagor, acknowledged the foregoing Credit Line Fee and Leasehold Deed of Trust for the purposes therein contained as the Chief Financial Officer of <b>BKEP PIPELINE, L.L.C.</b> (formerly known as BKEP Pipeline G.P., L.L.C. and SemPipe G.P., L.L.C.), a Delaware limited liability company.</p>

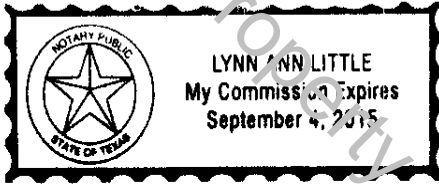
# UNOFFICIAL COPY

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the City of Dallas, Dallas County, Texas.

*Lynn A Little*

[STAMP]

NOTARY PUBLIC, in and for the State of Texas  
residing at Dallas, Dallas County, Texas



Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
My commission number: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## ACKNOWLEDGMENT (BKEP FIELD SERVICES, L.L.C.)

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

BE IT REMEMBERED THAT I, the undersigned authority, a notary public duly qualified, commissioned, sworn and acting in and for the county and state aforesaid, and being authorized in such county and state to take acknowledgments, hereby certify that, on this 26th day of June, 2013, there personally appeared before me: Alex G. Stallings, Chief Financial Officer of **BKEP FIELD SERVICES, L.L.C.**, a Delaware limited liability company, a Delaware limited liability company, such limited liability company being a party to the annexed and foregoing instrument, who stated that he was duly authorized in his capacity to execute the said foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Montana, Nebraska, New Jersey, New Mexico, Nevada, Oklahoma, Ohio, Texas, Utah, or Washington	The foregoing instrument was acknowledged before me on this 26th day of June, 2013, by Alex G. Stallings, as Chief Financial Officer of <b>BKEP FIELD SERVICES, L.L.C.</b> , a Delaware limited liability company, on behalf of said limited liability company. Witness my hand and official seal.
California	On June 26, 2013, before me, Alex G. Stallings personally appeared, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.  I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
Michigan and Pennsylvania	On this 26th day of June, 2013, before me, a Notary Public, personally appeared Alex G. Stallings, who acknowledged himself to be the Chief Financial Officer of <b>BKEP FIELD SERVICES, L.L.C.</b> , a Delaware limited liability company, on behalf of said limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as such officer.



# UNOFFICIAL COPY

Missouri	<p>On this 26th day of June, 2013, before me, a Notary Public in and for said State, personally appeared Alex G. Stallings, to me personally known, who being by me duly sworn did say that he is the Chief Financial Officer of <b>BKEP FIELD SERVICES, L.L.C.</b>, a Delaware limited liability company, on behalf of said limited liability company, and that said instrument was signed on behalf of said limited liability company, and said Alex G. Stallings acknowledged to me that he executed the same for the purposes therein stated, and as his free act and deed and as the free act and deed of said limited liability company.</p>
Tennessee	<p>Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Alex G. Stallings, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the Chief Financial Officer of <b>BKEP FIELD SERVICES, L.L.C.</b>, a Delaware limited liability company, on behalf of said limited liability company, the within named Mortgagor, and that Alex G. Stallings as such Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Financial Officer.</p>
Virginia	<p>I, _____, a Notary Public in and for the County and State aforesaid, hereby certify that Alex G. Stallings, who identified himself by means of a driver's license (photo identification), and who upon oath acknowledged himself to be Chief Financial Officer of <b>BKEP FIELD SERVICES, L.L.C.</b>, a Delaware limited liability company, on behalf of said limited liability company, the within named Mortgagor, acknowledged the foregoing Credit Line Fee and Leasehold Deed of Trust for the purposes therein contained as the Chief Financial Officer of <b>BKEP FIELD SERVICES, L.L.C.</b>, a Delaware limited liability company.</p>

# UNOFFICIAL COPY

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the City of Dallas, Dallas County, Texas.

*Lynn A. Little*

[STAMP]

NOTARY PUBLIC, in and for the State of Texas  
residing at Dallas, Dallas County, Texas



Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
My commission number: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## ACKNOWLEDGMENT (BKEP SERVICES LLC)

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

BE IT REMEMBERED THAT I, the undersigned authority, a notary public duly qualified, commissioned, sworn and acting in and for the county and state aforesaid, and being authorized in such county and state to take acknowledgments, hereby certify that, on this 26th day of June, 2013, there personally appeared before me: Alex G. Stallings, Chief Financial Officer of **BKEP SERVICES LLC**, (formerly known as BKEP Field Services II, L.L.C.), a Texas limited liability company, a Delaware limited liability company, such limited liability company being a party to the annexed and foregoing instrument, who stated that he was duly authorized in his capacity to execute the said foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Montana, Nebraska, New Jersey, New Mexico, Nevada, Oklahoma, Ohio, Texas, Utah, or Washington	The foregoing instrument was acknowledged before me on this 26th day of June, 2013, by Alex G. Stallings, as Chief Financial Officer of <b>BKEP SERVICES LLC</b> (formerly known as BKEP Field Services II, L.L.C.), a Texas limited liability company, on behalf of said limited liability company. Witness my hand and official seal.
California	On June 26, 2013, before me, Alex G. Stallings personally appeared, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.  I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
Michigan and Pennsylvania	On this 26th day of June, 2013, before me, a Notary Public, personally appeared Alex G. Stallings, who acknowledged himself to be the Chief Financial Officer of <b>BKEP SERVICES LLC</b> (formerly known as BKEP Field Services II, L.L.C.), a Texas limited liability company, on behalf of said limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as such officer.

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Missouri	<p>On this 26th day of June, 2013, before me, a Notary Public in and for said State, personally appeared Alex G. Stallings, to me personally known, who being by me duly sworn did say that he is the Chief Financial Officer of <b>BKEP SERVICES LLC</b> (formerly known as BKEP Field Services II, L.L.C.), a Texas limited liability company, on behalf of said limited liability company, and that said instrument was signed on behalf of said limited liability company, and said Alex G. Stallings acknowledged to me that he executed the same for the purposes therein stated, and as his free act and deed and as the free act and deed of said limited liability company.</p>
Tennessee	<p>Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Alex G. Stallings, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the Chief Financial Officer of <b>BKEP SERVICES LLC</b> (formerly known as BKEP Field Services II, L.L.C.), a Texas limited liability company, on behalf of said limited liability company, the within named Mortgagor, and that Alex G. Stallings as such Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Financial Officer.</p>
Virginia	<p>I, _____, a Notary Public in and for the County and State aforesaid hereby certify that Alex G. Stallings, who identified himself by means of a driver's license (photo identification), and who upon oath acknowledged himself to be Chief Financial Officer of <b>BKEP SERVICES LLC</b> (formerly known as BKEP Field Services II, L.L.C.), a Texas limited liability company, on behalf of said limited liability company, the within named Mortgagor, acknowledged the foregoing Credit Line Fee and Leasehold Deed of Trust for the purposes therein contained as the Chief Financial Officer of <b>BKEP SERVICES LLC</b> (formerly known as BKEP Field Services II, L.L.C.), a Texas limited liability company.</p>



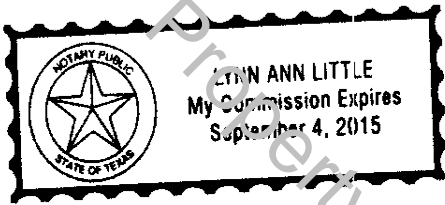
# UNOFFICIAL COPY

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the City of Dallas, Dallas County, Texas.

*Lynn A. Little*

[STAMP]

NOTARY PUBLIC, in and for the State of Texas  
residing at Dallas, Dallas County, Texas



Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
My commission number: \_\_\_\_\_

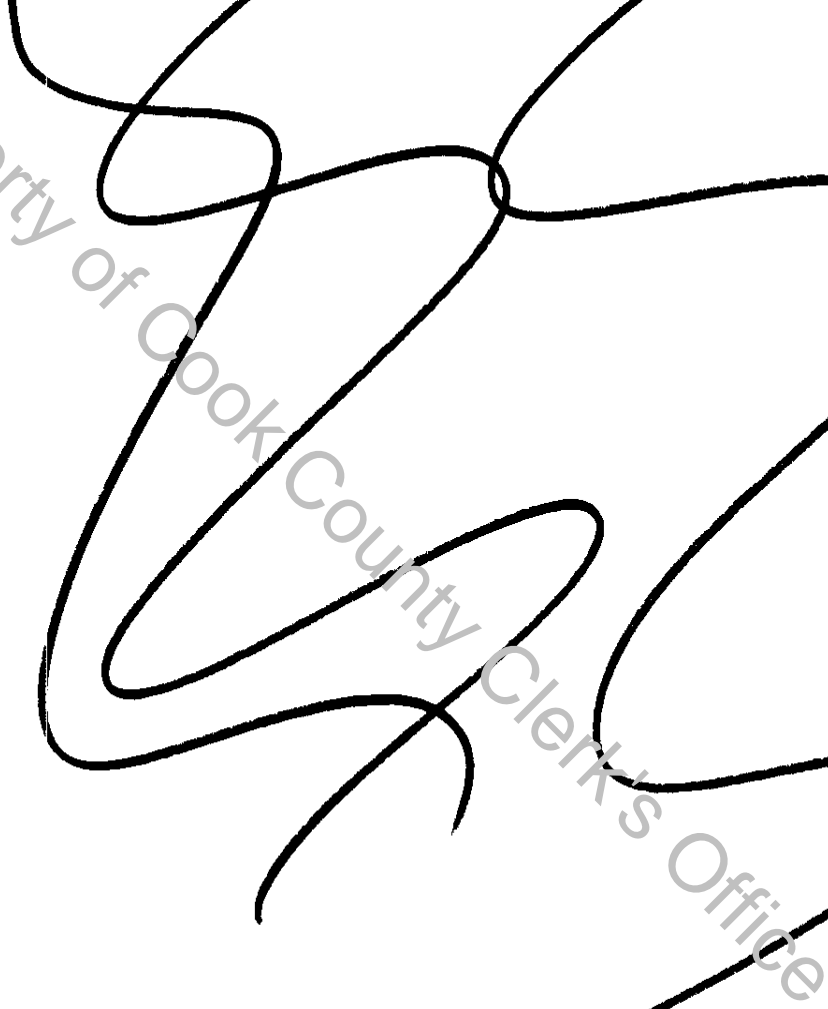
Property of Cook County Clerk's Office

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## EXHIBIT "A"

EXHIBIT "A" IMMEDIATELY FOLLOWS THIS COVER PAGE

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## Exhibit "A"

### Chicago, Illinois

That certain lease, between SemMaterials, L.P. (as ultimate successor in interest to Marine Oil Terminal Company), as lessee, and The Sanitary District of Chicago, as lessor, dated October 24, 1940, as amended, a memorandum of which is recorded as Document 0529255157 in the Cook County, IL, Recorder's Office, covering the property described on the following page, which lease was assigned to BKEP Materials, L.L.C. (f/k/a SemMaterials Energy Partners, L.L.C.) pursuant to that certain Assignment and Assumption of Lease Agreement effective as of February 20, 2008.

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## EXHIBIT A

### Chicago, Illinois

Lot Fifty-four (54) (except the East 50 feet and the Southerly 17 feet thereof) also the East 200 feet of Lot 56 (except the Southerly 17 feet thereof) in Sanitary District Trustees' Subdivision of the right of way from the North and South center line of Section 30, Township 39 North, Range 14, East of the third principal meridian, to the Will County line, in Cook County, Illinois.

Also described as follows:

A tract of land being part of Lots 54 and 56 in Sanitary District Trustees' Subdivision of the right-of-way from the North and the South center line of Section 30, Township 39 North, Range 14 East, of the third principal meridian, to the Will County Line, in Cook County, Illinois. Being more particularly described as follows:

Commencing at the Northeast corner of said Lot 54; thence South 66 degrees 17 minutes 35 seconds along the Northerly property line of said Lot 54, a distance of 54.61 feet to the point of beginning; thence South 00 degrees 00 minutes 00 seconds along a line 50.00 feet West of and parallel to the Easterly line of said Lot 54, a distance of 333.23 feet; thence South 66 degrees 05 minutes 00 seconds along a line 17.00 feet North of and parallel to the Southerly line of said Lots 54 and 56, a distance of 862.68 feet; thence North 00 degrees 12 minutes 11 seconds West, a distance of 336.16 feet to the Northerly line of said Lot 56; thence North 66 degrees 17 minutes 35 seconds East along the Northerly line of said Lots 56 and 54, a distance of 862.58 feet to the point of beginning, containing 264,348 square feet, or 6.07 acres, more or less.

The above description is the same property as contained in the report for title insurance issued by Lawyers Title Insurance Corporation Commitment Number 10686805, having an effective date of May 6, 2005.

PIN: 19-04-200-056-0000  
19-04-200-055-0000

Address: 4100 S. Cicero Ave., Chicago