



## Filing Receipt

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SOAH DOCKET NO. 473-21-2606  
PUC DOCKET NO. 52195

APPLICATION OF EL PASO § BEFORE THE STATE OFFICE  
ELECTRIC COMPANY TO CHANGE § OF  
RATES § ADMINISTRATIVE HEARINGS

EL PASO ELECTRIC COMPANY'S RESPONSE TO  
THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL  
EXECUTIVE AGENCIES' FIRST REQUEST FOR INFORMATION  
QUESTION NOS. DOD/FEA 1-1 THROUGH DOD/FEA 1-43

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DOD/FEA 1-1:

Please confirm that the Company has not included any short-term debt in its calculation of its Weighted Average Cost of Capital ("WACC") of 7.985%.

RESPONSE:

El Paso Electric Company has not included any short-term debt in its calculation of the Company's Weighted Average Cost of Capital ("WACC"). Please refer to Schedule K-3 for the list of each series of long-term debt securities included in the Weighted Average Cost of Debt component of its WACC.

Preparer: Richard Gonzalez

Title: Manager – Cash Management & Investor  
Relations

Sponsor: Lisa D. Budtke

Title: Director – Treasury Services & Investor  
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DOD/FEA 1-2:

Regarding the Rio Grande Resources Trust II (RGRT) as described on page 7, lines 1-2 and 23-24 of Ms. Budtke's Direct Testimony, "... the RGRT debt is excluded from rate base..." and "The cost of nuclear fuel, along with the RGRT financing costs, is recovered through EPE's fuel factor."

- a. Please explain why the Company's Revolving Credit facility (RCF) - Commitment Fees are included in rate base; and
- b. Why are these fees not considered an expense and/or included in EPE's fuel factor?

RESPONSE:

- a. El Paso Electric Company ("EPE" or "Company") is seeking to include Revolving Credit Facility ("RCF") Commitment Fees in base rates as these fees are an administrative expense required to ensure that EPE has sufficient liquidity to meet the Company's short-term funding requirements and in the event of an unexpected contingency. It is critical for EPE to maintain either a significant minimum level of cash or unused funds on the RCF to support liquidity requirements to maintain its investment grade bond ratings. There is Commission precedent in PUCT Docket No. 40443 (Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs) for the inclusion of similar credit line fees in cost of service.
- b. RCF Commitment Fees related to the Rio Grande Resources Trust II borrowings for nuclear fuel purchases are included in EPE's fuel factor.

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DOD/FEA 1-3:

Please confirm that the adjustment to Miscellaneous General Expenses for \$571,211 for the Company's RCF - Commitment Fees, as requested by the Company to be included in the Test Year revenue requirement level, is the amount on a total Company basis (reference Table LDB-4 of Ms. Budtke's Direct Testimony, page 19). Otherwise, please clarify.

RESPONSE:

The adjustment to Miscellaneous General Expenses for the Company's RCF Commitment Fees in the amount of \$571,211 is reflected on a Total Company basis.

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DOD/FEA 1-4:

Please refer to *Request for Information (RFI) OPUC 03-03\_Atatchemnt 1*. Please provide monthly amounts of the RCF - Commitment Fees and monthly unused balance subject to the RCF - Commitment Fees, i.e., the amount out of the \$400 million allotment by month/quarter that is used as the basis for the determination of RCF - Commitment Fees.

RESPONSE:

Please see DOD FEA 1-4, Attachment 1, which includes the available Revolving Credit Facility ("RCF") balance on which the Commitment Fees are calculated. Commitment fees are paid quarterly, and the amounts paid by El Paso Electric Company and Rio Grande Resources Trust II have been reflected. Please note that the Company's RCF was increased to \$400 million effective March 20, 2020, from its previous amount of \$350 million. In addition, the RCF available balance is reduced by an outstanding letter of credit in the amount of \$165,000.

Preparer: Richard Gonzalez

Title: Manager – Cash Management & Investor Relations

Sponsor: Lisa D. Budtke

Title: Director – Treasury Services & Investor Relations

Month Number	El Paso Electric RCF Balance at Month End	RGRT RCF Balance at Month End	Total RCF Balance at Month End	RCF Available Credit	EPE Commitment Fees	RGRT Commitment Fees
201801	104,000,000.00	78,980,000.00	182,980,000.00	166,855,000.00		
201802	122,000,000.00	82,312,000.00	204,312,000.00	145,523,000.00		
201803	144,000,000.00	88,945,000.00	232,945,000.00	116,890,000.00	55,459.45	19,455.38
201804	152,000,000.00	79,521,000.00	231,521,000.00	118,314,000.00		
201805	167,000,000.00	88,488,000.00	255,488,000.00	94,347,000.00		
201806	56,000,000.00	24,407,000.00	80,407,000.00	269,428,000.00	35,596.53	12,487.40
201807	36,000,000.00	15,576,000.00	51,576,000.00	298,259,000.00		
201808	-	19,029,000.00	19,029,000.00	330,806,000.00		
201809	-	19,329,000.00	19,329,000.00	330,506,000.00	20,230.56	7,096.96
201810	-	23,799,000.00	23,799,000.00	326,036,000.00		
201811	-	25,655,000.00	25,655,000.00	324,180,000.00		
201812	23,000,000.00	26,152,000.00	49,152,000.00	300,683,000.00	107,268.71	37,630.26
201901	103,000,000.00	18,462,000.00	121,462,000.00	228,373,000.00		
201902	120,000,000.00	23,026,000.00	143,026,000.00	206,809,000.00		
201903	173,000,000.00	29,903,000.00	202,903,000.00	146,932,000.00	79,904.01	27,277.76
201904	184,500,000.00	19,695,000.00	204,195,000.00	145,640,000.00		
201905	111,500,000.00	25,912,000.00	137,412,000.00	212,423,000.00		
201906	133,500,000.00	27,226,000.00	160,726,000.00	189,109,000.00	55,267.80	18,867.41
201907	122,000,000.00	18,565,000.00	140,565,000.00	209,270,000.00		
201908	94,000,000.00	21,072,000.00	115,072,000.00	234,763,000.00		
201909	77,000,000.00	22,782,000.00	99,782,000.00	250,053,000.00	77,118.66	26,326.89
201910	52,000,000.00	26,258,000.00	78,258,000.00	271,577,000.00		
201911	52,000,000.00	27,408,000.00	79,408,000.00	270,427,000.00		
201912	84,000,000.00	29,747,000.00	113,747,000.00	236,088,000.00	102,043.29	34,835.70
202001	106,000,000.00	20,907,000.00	126,907,000.00	222,928,000.00		
202002	117,000,000.00	25,180,000.00	142,180,000.00	207,655,000.00		
202003	207,000,000.00	33,741,000.00	240,741,000.00	159,094,000.00	99,375.23	9,302.84
202004	212,000,000.00	27,750,000.00	239,750,000.00	160,085,000.00		
202005	239,000,000.00	30,899,000.00	269,899,000.00	129,936,000.00		
202006	256,000,000.00	31,001,000.00	287,001,000.00	112,834,000.00	65,308.66	6,113.76
202007	278,000,000.00	22,055,000.00	300,055,000.00	99,780,000.00		
202008	254,000,000.00	69,545,000.00	323,545,000.00	76,290,000.00		
202009	61,000,000.00	73,519,000.00	134,519,000.00	265,316,000.00	57,552.85	5,387.71
202010	64,000,000.00	64,856,000.00	128,856,000.00	270,979,000.00		
202011	89,000,000.00	65,001,000.00	154,001,000.00	245,834,000.00		
202012	121,000,000.00	71,201,000.00	192,201,000.00	207,634,000.00	119,814.91	11,216.27
202101	155,000,000.00	63,853,000.00	218,853,000.00	180,982,000.00		
202102	173,000,000.00	66,456,000.00	239,456,000.00	160,379,000.00		
202103	179,000,000.00	68,117,000.00	247,117,000.00	152,718,000.00	64,427.75	14,518.15
202104	99,000,000.00	62,818,000.00	161,818,000.00	238,017,000.00		
202105	143,000,000.00	65,548,000.00	208,548,000.00	191,287,000.00		
202106	154,000,000.00	66,104,000.00	220,104,000.00	179,731,000.00	78,628.85	17,718.23

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DOD/FEA 1-5:

In reference to *RFI FEA 1-4* above, please indicate whether the RCF - Commitment Fees are assessed on the unused portion of the amounts shown in Column C or Column D of the file *RFI OPUC 03-03\_Atatchemnt 1*.

RESPONSE:

The Commitment Fees are assessed on the unused portion of the Revolving Credit Facility reflected in column D of El Paso Electric Company's response to OPUC 3-3, Attachment 1.

Preparer: Richard Gonzalez

Title: Manager – Cash Management & Investor Relations

Sponsor: Lisa D. Budtke

Title: Director – Treasury Services & Investor Relations

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DOD/FEA 1-6:

Please reconcile the amounts shown on page 5 of Ms. Budtke's Direct Testimony of \$192.3 million of short-term borrowing outstanding at the end of the Test Year (comprised of \$121.0 million for working capital or general purposes and \$71.3 million for nuclear fuel) with the amounts shown in the file *RFI OPUC 03-03\_Atatchemnt 1*.

RESPONSE:

Please refer to DOD/FEA 1-6, Attachment 1, for the reconciliation between El Paso Electric Company ("EPE") witness Budtke's direct testimony and EPE's response to OPUC 3-3, Attachment 1.

Preparer: Richard Gonzalez

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Sponsor: Lisa D. Budtke

Title: Director – Treasury Services & Investor Relations

<b>Lisa Budtke's</b>			
<b>EPE</b>	<b>Direct Testimony</b>	<b>OPUC 03-03</b>	<b>Variance</b>
ABR	3,000,000.00	3,000,000.00	
Libor	62,000,000.00	62,000,000.00	
Libor	56,000,000.00	56,000,000.00	
	<u>121,000,000.00</u>	<u>121,000,000.00</u>	
<b>RGRT</b>			
ABR	100,000.00	100,000.00	
Libor	55,082,000.00	55,082,000.00	
Libor	16,019,000.00	16,019,000.00	
<b>Accrued Int.</b>	<b>59,483.89</b>		
	<u>71,260,483.89</u>	<u>71,201,000.00</u>	
<b>Total EPE &amp; RGRT</b>	<b>192,260,483.89</b>	<b>192,201,000.00</b>	<b>59,483.89</b>
<b>Rounding</b>	<b>192,300,000.00</b>		

\*Accrued Interest is not included in the OPUC 03-03. Additionally, the \$192.3MM is a rounded number.

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DOD/FEA 1-7:

From the amounts on page 5 of Ms. Budtke's Direct Testimony, as referenced in *RFI FEA 1-6* above, please indicate whether the RCF - Commitment Fees are based on the unused portion of the \$192.3 million or the \$71.3 million. For reference, are the RCF - Commitment Fees calculated as the difference between the \$400 million and the \$121.0 million, or only the \$71.3 million?

RESPONSE:

The Revolving Credit Facility ("RCF") Commitment Fees are assessed on the total unused portion of the RCF. The amounts in question above are the borrowed amounts by El Paso Electric Company ("EPE") and Rio Grande Resources Trust II. Please refer to EPE's response to DOD/FEA 1-4, Attachment 1, for the RCF balance subject to the Commitment Fee.

Preparer: Richard Gonzalez

Title: Manager – Cash Management & Investor  
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Sponsor: Lisa D. Budtke

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DOD/FEA 1-8:

Please reconcile the amount shown on Table LDB-4 in Ms. Budtke's Direct Testimony, page 19, of \$73,594,000 for the highest level of borrowing for nuclear fuel during the Test Year with the amounts shown in the file *RFI OPUC 03-03 Atatchemnt 1*.

RESPONSE:

In El Paso Electric Company's ("EPE") response to OPUC 3-3, Attachment 1, the Rio Grande Resources Trust II ("RGRT") Revolving Credit Facility ("RCF") balances shown are the amounts borrowed at month end; while the amounts shown in Table LDB-4 in EPE witness Lisa Budtke's direct testimony are intra-month balances for the highest amount borrowed by RGRT during 2020.

Preparer: Richard Gonzalez

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DOD/FEA 1-9:

Has the Company ever borrowed the total balance available in the RCF? If so, please provide that history.

RESPONSE:

No, El Paso Electric Company ("EPE") has never borrowed the total balance of available credit. EPE must maintain either a significant minimum level of cash or unused funds on the Revolving Credit Facility ("RCF") to support liquidity requirements to maintain its investment grade bond ratings.

Preparer: Richard Gonzalez

Title: Manager – Cash Management & Investor  
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DOD/FEA 1-10:

Is the RCF fee tied to an interest rate index, market, or any other index?

RESPONSE:

No. The Revolving Credit Facility ("RCF") Commitment fee is calculated using the rates that are outlined in El Paso Electric Company's ("EPE" or the "Company") Credit Agreement. The rates are based on the Company's credit ratings as assigned by the Rating Agencies. Since EPE's Senior Unsecured debt is rated by BBB+ by Fitch and Baa2 by Moody's, EPE falls into Category 3 on the pricing grid in Amendment No. 1 to the Third Amended and Restated Credit Agreement. Please see DOD/FEA 1-13, Attachment 3-Confidential, page 3 of 21.

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DOD/FEA 1-11:

Please provide the effective RCF fee rate for each of the quarters shown in the file *RFI OPUC 03-03\_Atatchemnt 1*, or the last eight quarters.

RESPONSE:

From January 2019 to September 17, 2020, the Revolving Credit Facility ("RCF") Commitment Fee rate was 0.200%. On September 18, 2020, the RCF Commitment Fee rate changed to 0.175% due to S&P withdrawing its ratings on El Paso Electric Company ("EPE"). As a result, EPE was left with only Moody's and Fitch providing ratings on the EPE. The RCF Credit Agreement stipulates that if EPE has two ratings that fall within different fee categories, then the RCF Commitment Fee shall be based upon the percentages listed in the Category corresponding to the higher of the ratings. Since EPE's Senior Unsecured debt is rated BBB+ by Fitch and Baa2 by Moody's, EPE has since moved to Category 3 on the pricing grid from Category 4. Please see DOD/FEA 1-13, Attachment 3-Confidential, page 3 of 21.

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DOD/FEA 1-12:

Please provide a brief explanation as to why the RCF fee changed for any of the time periods in the file *RFI OPUC 03-03 Attachment 1* (if applicable).

RESPONSE:

Please refer to El Paso Electric Company's response to DOD/FEA 1-11.

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DOD/FEA 1-13:

Please provide copies of contractual or other documentation that provide the basis for determining the RCF fee level charged to the Company, and that would provide the basis for how the fee can change over time.

RESPONSE:

Please see DOD/FEA 1-13, Attachment 1-Voluminous, Attachment 2, and Attachment 3-Confidential for the requested Revolving Credit Facility Credit Agreement documents, which specify the basis upon which the Commitment Fees are assessed.

Preparer: Richard Gonzalez

Title: Manager – Cash Management & Investor  
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Sponsor: Lisa D. Budtke

Title: Director – Treasury Services & Investor  
Relations

\$350,000,000

THIRD AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

September 13, 2018,

among

EL PASO ELECTRIC COMPANY,

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
*not in its individual capacity,  
but solely in its capacity as successor trustee of the  
Rio Grande Resources Trust II,*

THE LENDERS PARTY HERETO,

THE ISSUING BANKS PARTY HERETO,

*and*

MUFG UNION BANK, N.A.,  
*as Administrative Agent  
and Syndication Agent*

---

**MUFG UNION BANK, N.A., JPMORGAN CHASE BANK, N.A.,  
MIZUHO BANK, LTD., U.S. BANK NATIONAL ASSOCIATION  
and WELLS FARGO SECURITIES, LLC,**  
*as Joint Lead Arrangers and Joint Bookrunners*

**JPMORGAN CHASE BANK, N.A., MIZUHO BANK, LTD.,  
U.S. BANK NATIONAL ASSOCIATION and  
WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
*as Co-Documentation Agents*

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## EXHIBITS

Exhibit A	Form of Administrative Questionnaire
Exhibit B	Form of Assignment and Acceptance
Exhibit C	Form of Borrowing Request
Exhibit D	Form of Subsidiary Guarantee Agreement

THIRD AMENDED AND RESTATED CREDIT AGREEMENT, dated as of September 13, 2018 (as amended from time to time, this “**Agreement**”), among EL PASO ELECTRIC COMPANY, a Texas corporation (“**El Paso**”), THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association with trust powers, not in its individual capacity, but solely in its capacity as successor trustee of the Rio Grande Resources Trust II (said trustee being the successor to JPMorgan Chase Bank, N.A., formerly known as JPMorgan Chase Bank, successor by merger to The Chase Manhattan Bank, successor by merger to Chase Bank of Texas, National Association, successor by change of name to Texas Commerce Bank National Association, as trustee of the Rio Grande Resources Trust II) (in such capacity, including any successor thereto, the “**Trustee**”; each of El Paso and the Trustee is referred to individually herein as a “**Borrower**” and collectively as the “**Borrowers**”), the Lenders (as defined in Article I) named herein and from time to time party hereto, the Issuing Banks (as defined in Article I) named herein and from time to time party hereto, MUFG UNION BANK, N.A., as administrative agent (in such capacity, including any successor thereto, the “**Administrative Agent**”) for the Lenders and the Issuing Banks, and MUFG UNION BANK, N.A., as syndication agent (in such capacity, including any successor thereto, the “**Syndication Agent**”).

The Borrowers, certain Lenders, JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the “**Resigning Agent**”) and as issuing bank, and the Syndication Agent previously entered into that certain Second Amended and Restated Credit Agreement, dated as of January 14, 2014 (as supplemented pursuant to the Extension and Increase Confirmation, dated as of January 9, 2017, and as further amended, supplemented or otherwise modified from time to time prior to the date hereof, the “**Existing Credit Agreement**”). The parties hereto desire to amend and restate the Existing Credit Agreement, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree that the Existing Credit Agreement is hereby amended and restated in its entirety, without novation, as follows:

## ARTICLE I

### Definitions

SECTION 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings specified below:

“**ABR Borrowing**” shall mean a Borrowing comprised of ABR Loans.

“**ABR Loan**” shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“**Adjusted LIBO Rate**” shall mean, with respect to any Eurodollar Loan for any Interest Period, an interest rate *per annum* equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“**Administrative Agent**” shall have the meaning assigned to such term in the preamble to this Agreement.

***“Administrative Agent Fees”*** shall have the meaning assigned to such term in Section 2.05(b).

***“Administrative Questionnaire”*** shall mean an Administrative Questionnaire in the form of Exhibit A, or such other form as shall be approved by the Administrative Agent.

***“Affiliate”*** shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified.

***“Agent”*** shall mean each of the Administrative Agent and the Syndication Agent.

***“Aggregate Credit Exposure”*** shall mean the aggregate amount of the Lenders’ Credit Exposures.

***“Alternate Base Rate”*** shall mean, for any day, a rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) the Adjusted LIBO Rate for an Interest Period of one month beginning on such day (or, if such day is not a Business Day, the immediately preceding Business Day) plus 1% (*provided* that, for the avoidance of doubt, such Adjusted LIBO Rate for any day shall be based on the rate appearing on the Reuters Screen LIBOR01 (or on any successor or substitute screen or page of such service) at approximately 11:00 a.m. London time two Business Days prior to such day or shall otherwise calculated in accordance with the definition of “LIBO Rate”). If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

***“Anti-Corruption Laws”*** shall have the meaning assigned to such term in Section 3.17(c).

***“Anti-Terrorism Order”*** shall mean Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), as amended from time to time.

***“Applicable Percentage”*** of any Lender at any time shall mean the percentage of the Total Commitment represented by such Lender’s Commitment. In the event the Commitments shall have expired or been terminated, the Applicable Percentages shall be determined on the basis of the Commitments most recently in effect.

***“Applicable Ratings”*** shall mean at any time the credit ratings at such time by the Rating Agencies of the Index Debt.

“**Applicable Spread**” shall mean, for any day, with respect to any Eurodollar Loan or ABR Loan, or with respect to the Commitment Fee, as the case may be, the applicable percentage set forth below under the caption “LIBOR Spread”, “ABR Spread” or “Commitment Fee”, as the case may be, based upon the higher of the Applicable Ratings:

	<u>Applicable Ratings</u> <u>(S&amp;P/Moody's)</u>	<u>LIBOR</u> <u>Spread</u>	<u>ABR</u> <u>Spread</u>	<u>Commitment Fee</u>
Category 1	A/A2 or better	0.875%	0.0875%	0.100%
Category 2	A-/A3	1.000%	0.100%	0.125%
Category 3	BBB+/Baa1	1.125%	0.125%	0.175%
Category 4	BBB/Baa2	1.250%	0.250%	0.200%
Category 5	BBB-/Baa3	1.500%	0.500%	0.250%
Category 6	Less than BBB-/Baa3 (or unrated)	1.750%	0.750%	0.300%

Notwithstanding the foregoing, (a) if (i) both Rating Agencies cease to provide a current Applicable Rating or (ii) the Applicable Rating of either Rating Agency shall be below BBB- or Baa3, as the case may be, the Applicable Spread shall correspond to the percentages listed in Category 6; (b) if the Applicable Ratings of the Rating Agencies fall within different Categories, and the higher numbered Category is more than one numbered Category higher than the lower numbered Category, then the Applicable Spread shall correspond to the percentages listed in the next higher numbered Category from that of the lower numbered Category; and (c) at any time after the occurrence and during the continuation of an Event of Default, the Applicable Spread shall correspond to the percentages listed in Category 6. The Applicable Spread shall be increased or decreased in accordance with the foregoing table upon any change in the Applicable Ratings. The Applicable Ratings in effect at any date are those in effect at the close of business on such date.

“**Assignment and Acceptance**” shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent, in the form of Exhibit B or such other form as shall be approved by the Administrative Agent.

“**Atomic Energy Act**” shall mean the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et seq.* and the rules and regulations promulgated thereunder, as amended from time to time.

“**Augmenting Lender**” shall have the meaning assigned to such term in Section 2.21(a).

**“Bail-In Action”** shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution

**“Bail-In Legislation”** shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

**“Beneficial Ownership Certification”** shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** shall mean 31 C.F.R. § 1010.230, as amended, or any successor thereto.

**“Benefit Plan”** shall mean any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any person whose assets include (for purposes of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

**“Board”** shall mean the Board of Governors of the Federal Reserve System of the United States of America.

**“BONY”** shall mean The Bank of New York Mellon Trust Company, N.A., together with its successors and assigns.

**“Borrower”** and **“Borrowers”** shall have the meanings assigned to such terms in the preamble to this Agreement.

**“Borrowing”** shall mean a group of Loans of a single Type made by the Lenders to the same Borrower on a single date and as to which a single Interest Period is in effect.

**“Borrowing Request”** shall mean a request by a Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C.

**“Business Day”** shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term **“Business Day”** shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

**“Capital Lease Obligations”** of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and

the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“Cash Collateralize”** shall mean to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the Issuing Banks or Lenders, as collateral for L/C Exposure or obligations of Lenders to fund participations in respect of L/C Exposure, cash or deposit account balances or, if the Administrative Agent and each applicable Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and each applicable Issuing Bank. **“Cash Collateral”** shall have a meaning analogous to the foregoing and shall include the proceeds of such cash collateral and other credit support.

A **“Change in Control”** shall be deemed to have occurred if (a) any “person” or “group” (within the meaning of Rule 13d-5 of the Securities Exchange Act) becomes the “beneficial owner” (within the meaning of Rules 13d-3 and 13d-5 of the Securities Exchange Act), directly or indirectly, of more than 50% of the outstanding shares of common stock of El Paso entitled to vote for members of the board of directors or equivalent governing body of El Paso or (b) a majority of the members of the Board of Directors of El Paso are not Continuing Directors; *provided, however*, that a **“Change in Control”** shall be deemed not to have occurred solely as a result of the formation of a holding company for El Paso as part of any transaction (merger, consolidation, plan of exchange, or otherwise) in which, immediately following such transaction, (i) such holding company owns 100% of the common stock of El Paso and (ii) such holding company is beneficially owned by the former holders of El Paso’s common stock in substantially the same proportions as their beneficial ownership of El Paso’s common stock immediately prior to such transaction.

**“Change in Law”** shall mean (a) the adoption of any law, rule, regulation or treaty after the date of this Agreement, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.12(b), by any lending office of such Lender or by such Lender’s or such Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided that* notwithstanding anything herein to the contrary, (x) the Dodd-Frank Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, regulations, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time.

**“Commitment”** shall mean, with respect to each Lender, the commitment of such Lender to make Loans hereunder as set forth on Schedule 2.01, or in the Assignment and

Acceptance pursuant to which such Lender assumed its Commitment, or, with respect to an Augmenting Lender, in the documentation executed by such Augmenting Lender pursuant to Section 2.21(a), as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 or pursuant to Section 2.19, (b) increased (with the consent of such Lender) from time to time pursuant to Section 2.21 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04.

**“Commitment Fee”** shall have the meaning assigned to such term in Section 2.05(a).

**“Continuing Directors”** shall mean, as of any date of determination, any member of the board of directors of El Paso who (i) was a member of such board of directors on the Effective Date or (ii) was nominated for election or elected to such board of directors with the approval of a majority of Continuing Directors who were members of such board at the time of such nomination or election.

**“Control”** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and **“Controlling”** and **“Controlled”** shall have meanings correlative thereto.

**“Credit Event”** shall have the meaning assigned to such term in Section 4.01.

**“Credit Exposure”** shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Loans of such Lender *plus* the aggregate amount at such time of such Lender’s L/C Exposure.

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

**“Default”** shall mean any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

**“Defaulting Lender”** shall mean, subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified the Borrowers, the Administrative Agent or any Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding

(which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-in Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) upon delivery of written notice of such determination to the Borrowers, each Issuing Bank and each Lender.

“**Dodd-Frank Act**” shall mean the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), as amended.

“**dollars**” or “**\$**” shall mean lawful money of the United States of America.

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

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

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

“**EEA Resolution Authority**” shall mean any public administrative authority, any Governmental Authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

**“Effective Date”** shall mean the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Section 10.08), which date is September 13, 2018.

**“Effective Date Increasing Lender”** shall mean any Existing Lender whose Commitment (as set forth on Schedule 2.01) exceeds its Commitment (as defined in the Existing Credit Agreement) under the Existing Credit Agreement immediately prior to the Effective Date.

**“El Paso”** shall have the meaning assigned to such term in the preamble to this Agreement.

**“El Paso L/C Exposure”** shall mean that part of the L/C Exposure attributable to all Letters of Credit issued for the account of El Paso.

**“El Paso Obligations”** shall mean (i) the due and punctual payment of (A) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans made to El Paso, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (B) all monetary obligations of El Paso pursuant to the Guarantee in Article IX hereof, (C) each payment required to be made by El Paso under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide Cash Collateral and (D) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of El Paso to the Administrative Agent and the Lenders under this Agreement and the other Loan Documents and (ii) the due and punctual performance of all covenants, agreements, obligations and liabilities of El Paso under or pursuant to this Agreement and the other Loan Documents.

**“Environment”** shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, flora and fauna, natural resources or the workplace.

**“Environmental Claim”** shall mean any written accusation, allegation, notice of violation, claim, demand, order, directive, consent decree, cost recovery action or other cause of action by, or on behalf of, any Governmental Authority or any person for damages, injunctive or equitable relief, personal injury (including sickness, disease or death), Remedial Action costs, tangible or intangible property damage, natural resource damages, nuisance, pollution, any adverse effect on the Environment caused by any Hazardous Material, or for fines, penalties or restrictions, resulting from or based upon: (a) the existence, or the continuation of the existence, of a Release (including sudden or non-sudden, accidental or non-accidental Releases); (b) exposure to any Hazardous Material; (c) the presence, use, handling, transportation, storage, treatment or disposal of any Hazardous Material; or (d) the violation or alleged violation of any Environmental Law or Environmental Permit.

**“Environmental Law”** shall mean any and all applicable present and future treaties, laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the Environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.* (collectively **“CERCLA”**), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act of 1970, 42 U.S.C. §§ 7401 *et seq.*, as amended, the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*, the Occupational Safety and Health Act of 1970, as amended by 29 U.S.C. §§ 651 *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, the Safe Drinking Water Act of 1974, as amended by 42 U.S.C. §§ 300(f) *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 *et seq.*, the Atomic Energy Act and Low-Level Radioactive Waste Policy Act, 42 U.S.C. §§ 2014 *et seq.*, as amended, and any similar or implementing state or local law, and all amendments or regulations promulgated thereunder.

**“Environmental Permit”** shall mean any permit, approval, authorization, certificate, license, variance, filing or permission required by or from any Governmental Authority pursuant to any Environmental Law.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

**“ERISA Affiliate”** shall mean any trade or business (whether or not incorporated) that, together with El Paso, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Sections 302 and 4007 of ERISA and Sections 412 and 4971 of the Code, is treated as a single employer under Section 414 of the Code.

**“ERISA Event”** shall mean (a) any *“reportable event”*, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan; (b) the adoption of any amendment to a Plan that would contravene Section 436 of the Code or Section 303 of ERISA; (c) a determination that any Plan is in *“at risk”* status (within the meaning of Section 430 of the Code or Section 303 of ERISA) or any Multiemployer Plan to which El Paso or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years has made or been obligated to make contributions, is in *“endangered status”* or *“critical status”* within the meaning of Section 432 of the Code; (d) the failure with respect to any Plan to meet the minimum funding standards (within the meaning of Section 412 or 430 of the Code or Section 302 or 303 of ERISA), whether or not waived; (e) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (f) the incurrence of any liability under Title IV of ERISA with respect to a Plan (other than for PBGC premiums due but not delinquent) or Multiemployer Plan; (g) the filing of a notice of intent to terminate a Plan under Section 4041 of ERISA; (h) the receipt

by El Paso or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (i) the receipt by El Paso or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (j) the occurrence of a non-exempt “prohibited transaction”, within the meaning of Section 4975 of the Code or Section 406 of ERISA, with respect to which El Paso or any of the Subsidiaries is a “disqualified person” (within the meaning of Section 4975 of the Code) or with respect to which El Paso or any such Subsidiary could otherwise be liable; and (k) any other event or condition with respect to a Plan or Multiemployer Plan that could reasonably be expected to result in liability of El Paso.

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

“**Eurodollar Borrowing**” shall mean a Borrowing comprised of Eurodollar Loans.

“**Eurodollar Loan**” shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

“**Event of Default**” shall have the meaning assigned to such term in Article VII.

“**Excluded Taxes**” shall mean, with respect to any payment made by any Loan Party under any Loan Document, any of the following Taxes imposed on or with respect to a Recipient: (a) Other Connection Taxes, (b) Taxes that would not have arisen but for a failure by a Non-U.S. Lender to comply with the provisions of Section 2.18(f), and (c) in the case of a Lender (other than an assignee pursuant to a request by a Borrower under Section 2.19(a)), any U.S. Federal withholding Taxes under the laws as in effect (including FATCA) on (and, in the case of FATCA, including any regulations or official interpretations thereof issued after) the date such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding Taxes pursuant to Section 2.18(a).

“**Existing Credit Agreement**” shall have the meaning assigned to such term in the preamble to this Agreement.

“**Existing Lender**” shall mean a Lender (as defined in the Existing Credit Agreement) under the Existing Credit Agreement that, on the Effective Date, is a Lender hereunder.

“**Existing Letters of Credit**” shall mean the letters of credit issued by JPMorgan that are set forth in Schedule 2.20.

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as in effect on the Effective Date, and any applicable Treasury regulations promulgated thereunder or published administrative guidance implementing such Sections.

“**FCPA**” shall have the meaning assigned to such term in Section 3.17(c).

“**Federal Funds Effective Rate**” shall mean, for any day, the rate *per annum* (rounded upwards, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York; *provided* that (a) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the immediately preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upwards, if necessary, to the nearest 1/100th of 1%) charged to MUFG on such day on such transactions as determined by the Administrative Agent; *provided, further*, that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“**Federal Power Act**” shall mean the Federal Power Act of 1920, 16 U.S.C. §§ 791a *et seq.*, and the rules and regulations promulgated thereunder, as amended from time to time.

“**Fee Letter**” shall mean that certain letter agreement entitled “Amendment and Extension of the El Paso Electric Company Second Amended and Restated Credit Agreement”, dated August 15, 2018, between El Paso and MUFG.

“**Fees**” shall mean the Commitment Fees, the Administrative Agent Fees, the L/C Participation Fees, the Upfront Fees, the Issuing Bank Fees and any other fees payable pursuant to any Other Fee Letter.

“**FERC**” shall mean the Federal Energy Regulatory Commission, or any Governmental Authority succeeding to any or all of such Commission’s authority.

“**Financial Officer**” of any person shall mean the chief financial officer, principal accounting officer, treasurer, controller or other vice president with financial planning responsibilities of such person.

“**First Mortgage Bonds**” shall mean any series of First Mortgage Bonds of El Paso issued pursuant to a Mortgage Indenture after the Effective Date.

“**Fronting Exposure**” shall mean, at any time there is a Defaulting Lender, with respect to any Issuing Bank, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Exposure with respect to Letters of Credit issued by such Issuing Bank other than L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America applied on a consistent basis.

“**Governmental Authority**” shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

**“Guarantee”** of or by any person shall mean any obligation, contingent or otherwise, of such person guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of such person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness or (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; *provided, however*, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

**“Hazardous Materials”** shall mean all explosive or radioactive substances or wastes, hazardous or toxic substances or wastes, pollutants, solid, liquid or gaseous wastes, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls (**“PCBs”**) or PCB-containing materials or equipment, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

**“Increasing Lender”** shall have the meaning assigned to such term in Section 2.21(a).

**“Incremental Facility Amount”** shall mean, at any time after the Effective Date, the excess, if any, of (a) \$50,000,000 over (b) the aggregate increase in the Total Commitment established prior to such time pursuant to Section 2.21.

**“Indebtedness”** of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person upon which interest charges are customarily paid, (d) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, (g) all Guarantees by such person of Indebtedness of others, (h) all Capital Lease Obligations of such person, (i) all obligations of such person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements, (j) the principal component of all obligations of such person as an account party in respect of letters of credit (other than any letter of credit in respect of which a back-to-back letter of credit has been issued under, or in a transaction permitted by, this Agreement, *provided* that the commercial bank issuing such back-to-back letter of credit (if other than any Issuing Bank) has a long-term senior unsecured debt rating of not less than A- by S&P and not less than A3 by Moody's) and (k) the principal component of all obligations of such person as an account party in respect of bankers'

acceptances. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such person in respect thereof.

***“Indemnified Taxes”*** shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by any Loan Party under any Loan Document and (b) Other Taxes.

***“Indemnitee”*** shall have the meaning assigned to such term in Section 10.05(b).

***“Index Debt”*** shall mean the senior, unsecured, non-credit enhanced, long-term debt of El Paso.

***“Initial Maturity Date”*** shall have the meaning assigned to such term in Section 2.22.

***“Interest Payment Date”*** shall mean, (a) with respect to any ABR Loan, the last day of each March, June, September and December, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing.

***“Interest Period”*** shall mean, as to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending one (1) week thereafter or on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one (1), two (2), three (3) or six (6) months thereafter, in each case, as the applicable Borrower may elect; *provided, however*, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

***“IRS”*** shall mean the United States Internal Revenue Service.

***“Issuing Bank”*** shall mean (a) each Lender identified on Schedule 1.01 and (b) any other Lender that agrees (in its sole discretion) to act as an Issuing Bank hereunder and issue Letters of Credit pursuant to the terms and conditions hereof and that becomes an Issuing Bank in accordance with Section 2.20(i) following the Effective Date.

***“Issuing Bank Fees”*** shall have the meaning assigned to such term in Section 2.05(c).

***“Joint Lead Arranger”*** shall mean each of MUFG, JPMorgan, U.S. Bank National Association, Wells Fargo Securities, LLC and Mizuho Bank, Ltd. Notwithstanding anything

contained in this Agreement to the contrary, no Lender identified as a Joint Lead Arranger shall have any separate duties, responsibilities, obligations, authority or rights as a Joint Lead Arranger.

**"JPMorgan"** shall mean JPMorgan Chase Bank, N.A., together with its successors and assigns.

**"L/C Commitment"** shall mean, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit pursuant to Section 2.20.

**"L/C Disbursement"** shall mean a payment or disbursement made by any Issuing Bank pursuant to a Letter of Credit.

**"L/C Exposure"** shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed at such time. The L/C Exposure of any Lender at any time shall mean its Applicable Percentage of the aggregate L/C Exposure at such time.

**"L/C Issuing Bank Sublimit"** shall mean, with respect to any Issuing Bank, the aggregate face amount of Letters of Credit at any one time outstanding that such Issuing Bank has committed, in writing, to issue in accordance with, and subject to the terms and conditions set forth in, this Agreement; *provided*, that the L/C Issuing Bank Sublimit of each Issuing Bank as of the Effective Date is as set forth on Schedule 1.01

**"L/C Participation Fee"** shall have the meaning assigned to such term in Section 2.05(c).

**"L/C Sublimit"** shall mean an amount equal to the lesser of (a) \$50,000,000 and (b) the Total Commitment. The L/C Sublimit is part of, and not in addition to, the Total Commitment.

**"Lenders"** shall mean (a) the financial institutions listed on Schedule 2.01, (b) any financial institution that has become a party hereto pursuant to an Assignment and Acceptance and (c) any Augmenting Lender, in each case other than any such financial institution or Augmenting Lender that has ceased to be a party hereto pursuant to an Assignment and Acceptance.

**"Letter of Credit"** shall mean any letter of credit issued pursuant to Section 2.20 (including, without limitation, all Existing Letters of Credit).

**"LIBO Rate"** shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the greater of (a) 0.00% and (b) the rate appearing on the Reuters Screen LIBOR01 Page (or on any successor or substitute screen or page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such screen of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the

London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the “*LIBO Rate*” with respect to such Eurodollar Borrowing for such Interest Period shall be the greater of (i) 0.00% *per annum* and (ii) the *per annum* rate at which dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; *provided, however*, that if the Administrative Agent in its reasonable discretion determines that such rate is no longer capable of being determined or that such circumstance has not arisen but that the supervisor for the administrator of such rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which such rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrowers shall endeavor to establish an alternate rate of interest to the rate described in clause (b) above that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time and adequately and fairly reflects the costs to the Lenders of funding Eurodollar Borrowings (any such proposed alternate rate, a “***LIBOR Successor Rate***”). Upon the Administrative Agent and the Borrowers reaching agreement on a LIBOR Successor Rate, the Administrative Agent and the Borrowers shall enter into an amendment to this Agreement to reflect such LIBOR Successor Rate and such other related changes to this Agreement as may be applicable, and notwithstanding anything to the contrary contained in Section 10.08, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days after the date a copy of such amendment is provided to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; *provided, however*, that if the Administrative Agent has notified the Lenders and the Borrowers that the rate described in clause (b) above is no longer capable of being determined or is no longer used for determining interest rates for loans, then unless and until an amendment implementing a LIBOR Successor Rate is effective, (i) the obligation of the Lenders to make or maintain Eurodollar Loans will be suspended and (ii) the LIBO Rate component will no longer be utilized in determining the Alternative Base Rate. Upon receipt of any such notice pursuant to the immediately preceding *proviso*, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Loans (to the extent of the impacted Eurodollar Loans or Interest Periods) or, failing that, shall be deemed to have converted such request into a request for a Borrowing of ABR Loans (except that the LIBO Rate component will no longer be utilized in determining the Alternative Base Rate for any such Loans) in the amount specified therein. Notwithstanding anything to the contrary contained herein, in no event shall a LIBOR Successor Rate at any time be less than 0.00%.

“***LIBOR Successor Rate***” shall have the meaning assigned to such term in the definition of “LIBO Rate”.

“***Lien***” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any

financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

***“Loan Documents”*** shall mean this Agreement, the Letters of Credit, the Fee Letter, any Notes, each Subsidiary Guarantee Agreement (if any) and the Other Fee Letters.

***“Loan Parties”*** shall mean the Borrowers and the Subsidiary Guarantors.

***“Loans”*** shall mean the loans made by the Lenders to the Borrowers pursuant to Section 2.01. Each Loan shall be a Eurodollar Loan or an ABR Loan.

***“Margin Stock”*** shall have the meaning assigned to such term in Regulation U.

***“Material Adverse Effect”*** shall mean (a) a materially adverse effect on the business, assets, operations or financial condition of El Paso and the Subsidiaries, taken as a whole, (b) material impairment of the ability of the Trustee, El Paso or the Subsidiary Guarantors (taken as a whole) to perform any of their respective payment or other material obligations under any Loan Document to which it is or will be a party or (c) material impairment of the rights of the Lenders under any Loan Document.

***“Material Credit Facility”*** shall mean (a) the Senior Unsecured Notes and (b) any bank or asset-based credit facilities (whether providing for revolving, letter of credit or term extensions of credit) that provide for extensions of credit or commitments therefor in an aggregate amount equal to or greater than \$100,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency on such date) and in respect of which El Paso or any of its Subsidiaries is obligated on Indebtedness (excluding, for the avoidance of doubt, this Agreement and any Mortgage Indenture securing First Mortgage Bonds (a ***“Credit Facility”***)); and if no Credit Facility or Credit Facilities equal or exceed such amounts, then the largest Credit Facility shall be deemed to be a Material Credit Facility.

***“Material Subsidiary”*** shall mean, at any time, (a) a Domestic Subsidiary of El Paso (other than a Receivables Subsidiary) with consolidated total assets at such time equal to or greater than 10% of El Paso’s consolidated total assets at such time or (b) any other Subsidiary which becomes a Subsidiary Guarantor.

***“Maturity Date”*** shall mean the Initial Maturity Date or such later date to which the Initial Maturity Date is extended pursuant to Section 2.22.

***“Minimum Collateral Amount”*** shall mean, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of all Issuing Banks with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent and the Issuing Banks in their sole discretion.

***“Moody’s”*** shall mean Moody’s Investors Service, Inc., and its successors.

**“Mortgage Indenture”** shall mean any indenture (including, without limitation, any indenture entered into by El Paso following the Effective Date) secured by a mortgage Lien upon El Paso’s Operating Property.

**“MUFG”** shall mean MUFG Union Bank, N.A., a national banking association, together with its successors and assigns.

**“Multiemployer Plan”** shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

**“New Lender”** shall mean any Lender listed on Schedule 2.01 that is not an Existing Lender.

**“non-consenting Lender”** shall have the meaning assigned to such term in Section 2.22.

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

**“Non-U.S. Lender”** shall mean a Lender that is not a U.S. Person.

**“Note”** shall have the meaning assigned to such term in Section 2.04(e).

**“Nuclear Fuel”** shall have the meaning assigned to such term in the Purchase Contract.

**“Nuclear Waste Act”** shall mean the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101 *et seq.*, the Nuclear Waste Policy Amendments Act of 1987, 42 U.S.C. §§ 10172, 10172a *et seq.*, and the rules and regulations promulgated thereunder, as amended from time to time.

**“Obligations”** shall mean, collectively, the Trust Obligations and the El Paso Obligations.

**“Obligation Termination Date”** shall have the meaning assigned to such term in Section 2.12(a).

**“Operating Property”** shall mean, as of any particular time, (a) all of the real, personal and mixed property which is an integral part of or is used or to be used as an integral part of the regulated electric generating, transmission and/or distribution operations of El Paso, (b) any undivided legal interest of El Paso in any such property which is jointly owned by El Paso and any other person or persons and (c) franchises and permits owned by El Paso in connection with the regulated electric generating, transmission and/or distribution operations of El Paso, including, without limitation, all of such property which is acquired by El Paso after the Effective Date; *provided, however*, that Operating Property shall not be deemed to include any Operating Property excepted under a Mortgage Indenture.

***“Other Connection Taxes”*** shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection arising solely from such Recipient having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to any Loan Document).

***“Other Fee Letters”*** shall mean, collectively, (i) any letter agreements described in Section 2.05(c)(ii) between any Borrower and any Issuing Bank setting forth the applicable Issuing Bank Fees payable to such Issuing Bank and/or the L/C Issuing Bank Sublimit of such Issuing Bank and (ii) any separate letter agreements with respect to fees payable to any Agent, any Issuing Bank or any Joint Lead Arranger, in each case, other than the Fee Letter.

***“Other Taxes”*** shall mean, any present or future stamp, court, documentary, intangible, recording, filing or similar excise or property Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, or from the registration, receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment under Section 2.19(a)).

***“Participant Register”*** has the meaning assigned to such term in Section 10.04(f).

***“PBGC”*** shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

***“Permitted Investments”*** shall mean:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a rating of P-1 (or higher) according to Moody's or a rating of A-1 (or higher) according to S&P;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank (including the Trustee) organized under the laws of the United States of America or any state thereof which has a combined capital and surplus and undivided profits of not less than \$250,000,000;

(d) investments in obligations of United States Federal agencies sponsored by the Federal government, including the Federal Home Loan Bank, the Federal

Farm Credit Bank, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and the Student Loan Marketing Association;

(e) repurchase obligations with a term of not more than seven days for underlying securities of the type described in clauses (a) and (d) entered into with financial institutions which have a combined capital and surplus and undivided profits of not less than \$250,000,000;

(f) investments in tax exempt securities, including municipal issued notes and bonds and variable-rate demand notes and bonds, having a rating at the time of acquisition thereof of at least BBB from S&P or Baa from Moody's;

(g) investments in corporate bonds or notes having maturities of not more than three years from the date of acquisition thereof and having a rating at the time of acquisition thereof of at least BBB from S&P or Baa from Moody's;

(h) investments in money market or other mutual funds substantially all of the assets of which consist of investments of the types described in clauses (a) through (g) above; and

(i) other investment instruments approved in writing by the Required Lenders and offered by financial institutions which have a combined capital and surplus and undivided profits of not less than \$250,000,000.

**"person"** shall mean any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof.

**"Plan"** shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which El Paso or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

**"Prime Rate"** shall mean the variable rate of interest *per annum* established by MUFG from time to time as its "reference rate". Such "reference rate" is set by MUFG as a general reference rate of interest, taking into account such factors as MUFG may deem appropriate, it being understood that many of MUFG's commercial or other loans are priced in relation to such rate, that it is not necessarily the lowest or best rate actually charged to any customer and that MUFG may make various commercial or other loans at rates of interest having no relationship to such rate. For purposes of this Agreement, each change in the Prime Rate shall be effective as of the opening of business on the date announced as the effective date of any change in such "reference rate".

**"PTE"** shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

**“Purchase Contract”** shall mean the Purchase Contract dated as of February 12, 1996, as amended as of February 11, 1999, July 12, 2007, August 17, 2010, September 23, 2010, June 28, 2018 and the Effective Date, between the Trustee and El Paso, as the same may be further amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof and hereof.

**“Purchase Contract Default”** shall have the meaning assigned to the term “Event of Default” in Section 19(a) of the Purchase Contract.

**“Rating Agency”** shall mean S&P and Moody’s.

**“Receivables”** shall have the meaning assigned to such term in the definition of “Receivables Facility”.

**“Receivables Facility”** shall mean one or more receivables financing facilities, as amended from time to time, the obligations in respect of which are non-recourse (except for customary representations, warranties, covenants, servicing obligations and indemnities made in connection with such facilities) to El Paso and the Subsidiaries (other than any Receivables Subsidiary), pursuant to which El Paso and/or any Subsidiary transfers its accounts receivable and other financial and related assets (collectively, **“Receivables”**) to a Receivables Subsidiary; *provided*, that all terms and conditions of, and all documentation relating to, a Receivables Facility shall be in form and substance customary to comparable receivables securitization facilities.

**“Receivables Facility Documents”** shall mean all agreements, in form and substance customary to a Receivables Facility, that may from time to time be entered into by El Paso or a Subsidiary in connection with any Receivables Facility, as such agreements may be amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof and hereof.

**“Receivables Subsidiary”** shall mean a wholly owned Domestic Subsidiary of El Paso formed solely for the purpose of engaging in a Receivables Facility and which acts as a purchaser of Receivables under a Receivables Facility.

**“Recipient”** shall mean, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank.

**“Refinancing Indebtedness”** shall have the meaning assigned to such term in Section 6.02(r).

**“Regional Transmission Organization”** shall mean an entity that satisfies the minimum characteristics, performs the functions, and accommodates the open architecture condition set forth in FERC regulations.

**“Register”** shall have the meaning given such term in Section 10.04(d).

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

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

**“Related Parties”** shall mean, with respect to any person, such person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such person and of such person’s Affiliates.

**“Release”** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the environment.

**“Remedial Action”** shall mean (i) *“remedial action”* as such term is defined in CERCLA, 42 U.S.C. § 9601(24), and (ii) all other actions required by any Governmental Authority or voluntarily undertaken to: (x) clean up, remove, treat, abate or in any other way address any Hazardous Material in the Environment; (y) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material; or (z) perform studies and investigations in connection with, or as a precondition to, (x) or (y) above.

**“Removal Effective Date”** shall have the meaning assigned to such term in Section 8.06(b).

**“Required Lenders”** shall mean, at any time, Lenders having Loans, L/C Exposure and unused Commitments representing more than 50% of the sum of all Loans outstanding, L/C Exposure and unused Commitments at such time; *provided*, that any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

**“Resignation Effective Date”** shall have the meaning assigned to such term in Section 8.06(a).

**“Resigning Agent”** shall have the meaning assigned to such term in the preamble to this Agreement.

**“Responsible Officer”** of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement.

**“Rio Grande Resources Trust II”** shall mean the trust created by the Trust Agreement.

**“Sanctions”** shall have the meaning assigned to such term in Section 3.17(b).

**“Sanctioned Countries”** shall have the meaning assigned to such term in Section 3.17(b).

**“Sanctioned Persons”** shall have the meaning assigned to such term in Section 3.17(b).

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

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

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

“**Senior Unsecured Notes**” shall mean El Paso’s (i) 6.0% Senior Notes due May 15, 2035 in an initial aggregate principal amount of \$400,000,000, (ii) 7.5% Senior Notes due March 15, 2038 in an initial aggregate principal amount of \$150,000,000, (iii) 3.30% Senior Notes due December 15, 2022 in an initial aggregate principal amount of \$150,000,000, (iv) 5.0% Senior Notes due December 1, 2044 in an initial aggregate principal amount of \$300,000,000, and (v) 4.22% Senior Notes due August 15, 2028 in an initial aggregate principal amount of \$125,000,000.

“**S&P**” shall mean S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc., and its successors.

“**Statutory Reserve Rate**” shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate, or other fronting office making or holding a Loan) is subject for eurocurrency funding (currently referred to as “*Eurocurrency Liabilities*” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Stockholders’ Equity**” shall mean, as at any date of determination, the stockholders’ equity at such date of El Paso, as determined in accordance with GAAP.

“**subsidiary**” shall mean, with respect to any person (herein referred to as the “*parent*”), any corporation, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned, controlled or held, or (b) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“**Subsidiary**” shall mean any subsidiary of El Paso.

**"Subsidiary Guarantee Agreement"** shall mean each guarantee agreement delivered pursuant to Section 5.09, each substantially in the form of Exhibit D.

**"Subsidiary Guarantor"** shall mean each Subsidiary that becomes a party to a Subsidiary Guarantee Agreement.

**"Successor Administrative Agent"** shall have the meaning assigned to such term in Section 8.10(a).

**"Syndication Agent"** shall have the meaning assigned to such term in the preamble to this Agreement. Notwithstanding anything contained in this Agreement to the contrary, no Lender identified as the Syndication Agent shall have any separate duties, responsibilities, obligations, authority or, except as expressly set forth in this Agreement, rights as Syndication Agent.

**"Taxes"** shall mean, any present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**"Total Consolidated Capital"** shall mean, as at any date of determination, the sum of Total Consolidated Debt on such date and Stockholders' Equity at such date.

**"Total Commitment"** shall mean, at any time, the aggregate amount of the Commitments, as in effect at such time. The Total Commitment as of the Effective Date is \$350,000,000.

**"Total Consolidated Debt"** shall mean, as of any date of determination, all Indebtedness (other than (a) Indebtedness of the type referred to in clause (i) of the definition of the term "Indebtedness", (b) Indebtedness of the type referred to in clause (j) of the definition of the term "Indebtedness", except to the extent of unreimbursed drawings thereunder, and (c) Indebtedness of the type referred to in clause (k) of the definition of the term "Indebtedness") of El Paso at such date.

**"Transactions"** shall have the meaning assigned to such term in Section 3.02.

**"Trust Agreement"** shall mean the Trust Agreement dated as of February 12, 1996, between the Trustee and El Paso, providing for the creation of the Rio Grande Resources Trust II, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof and hereof.

**"Trustee"** shall have the meaning assigned to such term in the preamble to this Agreement.

**"Trustee L/C Exposure"** shall mean that part of the L/C Exposure attributable to all Letters of Credit issued for the account of the Trustee.

**"Trust Estate"** shall have the meaning assigned to such term in the Trust Agreement.

***“Trust Indenture Act”*** shall mean the Trust Indenture Act of 1939, and the rules and regulations promulgated thereunder, as amended from time to time.

***“Trust Obligations”*** shall have the meaning assigned to such term in Section 9.01.

***“Trust Senior Unsecured Notes”*** shall mean the Rio Grande Resources Trust II’s (i) 5.04% Senior Notes due August 15, 2020 in an initial aggregate principal amount of \$45,000,000 and (ii) 4.07% Senior Guaranteed Notes due August 15, 2025 in an initial aggregate principal amount of \$65,000,000.

***“Trust Termination Date”*** shall mean the date of any termination of the Purchase Contract.

***“Type”***, when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term ***“Rate”*** shall include the Adjusted LIBO Rate and the Alternate Base Rate.

***“Upfront Fees”*** shall mean the upfront fees payable by El Paso to the Administrative Agent for the account of each Lender on the Effective Date in an amount as separately agreed by El Paso and the Administrative Agent in the Fee Letter.

***“USA Patriot Act”*** shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

***“U.S. Person”*** shall mean a “United States person” within the meaning of Section 7701(a)(30) of the Code.

***“U.S. Tax Certificate”*** has the meaning assigned to such term in Section 2.18(f)(ii)(D)(2).

***“Wholly Owned Subsidiary”*** of any person (the ***“Parent”***) shall mean a subsidiary of the Parent of which securities (except for directors’ qualifying shares) or other ownership interests representing 100% of the equity or 100% of the ordinary voting power or 100% of the general partnership interests are, at the time any determination is being made, owned, controlled or held by the Parent and/or one or more Wholly Owned Subsidiaries of the Parent.

***“Withdrawal Liability”*** shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

***“Withholding Agent”*** shall mean any Loan Party and the Administrative Agent.

***“Write-Down and Conversion Powers”*** shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority

from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02. *Terms Generally.* The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, (a) any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time and (b) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided, however*, that, if El Paso notifies the Administrative Agent that El Paso wishes to amend any covenant in Article VI or any related definition to eliminate the effect of any change in GAAP occurring after the Effective Date on the operation of such covenant (or if the Administrative Agent notifies El Paso that the Required Lenders wish to amend Article VI or any related definition for such purpose), then El Paso’s compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to El Paso and the Required Lenders. Anything in this Agreement or any other Loan Document to the contrary notwithstanding, GAAP will be deemed to treat any obligation of a person under a lease (whether existing as of the Effective Date or entered into in the future) that would have been classified and accounted for as an operating lease in accordance with GAAP as in effect on December 31, 2017 in a manner consistent with the treatment of such leases under GAAP as in effect on December 31, 2017, notwithstanding (x) the adoption of any changes in, or (y) any changes in the application of, GAAP thereafter; *provided*, that all payments under any such lease shall continue to be treated as an expense for purposes of calculating net income. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant or financial ratio) contained herein, the effects of FASB ASC 825, FASB ASC 470-20, FASB ASC-840-40-55 and FASB ASC 842 on financial liabilities shall be disregarded.

## ARTICLE II

### *The Credits*

SECTION 2.01. *Commitments.* Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make Loans to the Trustee or El Paso, at any time and from time to time on or after the date on which the conditions set forth in Section 4.02 are satisfied, and until the earlier of the Maturity Date and the termination of the Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender’s Credit Exposure exceeding such Lender’s Commitment. Within the limits set forth in the preceding sentence and subject to the terms, conditions and limitations set forth herein, the Borrowers may borrow, pay or prepay and reborrow Loans.

SECTION 2.02. *Loans.* (a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments; *provided, however*, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), the Loans comprising any Borrowing shall be in an aggregate principal amount that is (i)(A) with respect to any Eurodollar Borrowing, an integral multiple of \$1,000,000 and not less than \$5,000,000 or (B) with respect to any ABR Borrowing, an integral multiple of \$1,000 and not less than \$100,000 or (ii) equal to the remaining available balance of the Commitments.

(b) Subject to Sections 2.08 and 2.13, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the applicable Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided, however*, that the Borrowers shall not be entitled to request any Borrowing that, if made, would result in more than eight (8) Eurodollar Borrowings outstanding hereunder at any time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 2:00 p.m., New York City time, and the Administrative Agent shall by 3:00 p.m., New York City time, credit the amounts so received to an account in the name of the applicable Borrower maintained with the Administrative Agent and designated by such Borrower in the applicable Borrowing Request or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above and the Administrative Agent may, in reliance upon such assumption, make available to the applicable Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the applicable Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the applicable Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of either Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Effective Rate. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) Notwithstanding any other provision of this Agreement, (i) neither Borrower shall be entitled to request any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date and (ii) the Trustee shall not be entitled to request any Borrowing on or after the Trust Termination Date.

(f) If any Issuing Bank shall not have received from the Trustee or El Paso, as the case may be, the payment required to be made by Section 2.20(e) within the time specified in such Section, such Issuing Bank will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each Lender of such L/C Disbursement and its Applicable Percentage thereof. Each Lender shall pay by wire transfer of immediately available funds to the Administrative Agent not later than 2:00 p.m., New York City time, on such date (or, if such Lender shall have received such notice later than 12:00 (noon), New York City time, on any day, not later than 10:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Lender's Applicable Percentage of such L/C Disbursement (it being understood that such amount shall be deemed to constitute an ABR Loan of such Lender and such payment shall be deemed to have reduced the L/C Exposure by such amount), and the Administrative Agent will promptly pay to the applicable Issuing Bank amounts so received by it from the Lenders due to such Issuing Bank. The Administrative Agent will promptly pay to each Issuing Bank any amounts received by the Administrative Agent from the Trustee or El Paso, as the case may be, that are payable to such Issuing Bank pursuant to Section 2.20(e) prior to the time that any Lender makes any payment pursuant to this paragraph (f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Lenders that shall have made such payments and to the applicable Issuing Bank, as their interests may appear. If any Lender shall not have made its Applicable Percentage of such L/C Disbursement available to the Administrative Agent as provided above, such Lender and the Trustee or El Paso, as the case may be, severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this paragraph to but excluding the date such amount is paid, to the Administrative Agent at (i) in the case of the Trustee or El Paso, as the case may be, a rate *per annum* equal to the interest rate applicable to ABR Loans pursuant to Section 2.06(a), and (ii) in the case of such Lender, for the first such day, the Federal Funds Effective Rate, and for each day thereafter, the Alternate Base Rate.

SECTION 2.03. *Borrowing Procedure.* In order to request a Borrowing (other than a deemed Borrowing pursuant to Section 2.02(f), as to which this Section 2.03 shall not apply), the applicable Borrower shall hand deliver or telecopy to the Administrative Agent a duly completed Borrowing Request (a) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before a proposed Borrowing, and (b) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, on the day of the proposed Borrowing. Each Borrowing Request shall be irrevocable, shall be signed by or on behalf of the applicable Borrower and shall specify the following information: (i) whether the Borrowing then being requested is to be a Eurodollar Borrowing or an ABR Borrowing; (ii) the date of such Borrowing (which shall be a Business Day); (iii) the number and location of the account to which funds are to be disbursed (which shall be an account that complies with the requirements of Section 2.02(c)); (iv) the amount of such Borrowing; and (v) if such Borrowing is to be a Eurodollar Borrowing, the Interest Period with respect thereto; *provided, however*, that, notwithstanding any contrary specification in any Borrowing Request, each requested Borrowing

shall comply with the requirements set forth in Section 2.02. If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such notice, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the Lenders of any notice given pursuant to this Section 2.03 (and the contents thereof), and of each Lender's portion of the requested Borrowing.

SECTION 2.04. *Evidence of Debt; Repayment of Loans.* (a) Each Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan made to such Borrower on the Maturity Date; *provided*, however, that if the Purchase Contract shall terminate prior to the Maturity Date, the Trustee shall repay the unpaid principal amount of each Loan made to it on the earlier of (i) the Maturity Date, (ii) the 150th day following the Trust Termination Date, (iii) if any Event of Default that is not a Purchase Contract Default shall be in existence on the Trust Termination Date or shall thereafter occur, the 10th day following the later to occur of the Trust Termination Date or such Event of Default or (iv) if a Purchase Contract Default shall have occurred, on (A) the date of such occurrence or (B) such later date as the Administrative Agent may elect.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from each Borrower and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrowers to repay the Loans in accordance with their terms.

(e) Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive a promissory note payable to such Lender and its registered assigns (each, a "*Note*"), the interests represented by such Note shall at all times (including after any assignment of all or part of such interests pursuant to Section 10.04) be represented by one or more Notes payable to the payee named therein or its registered assigns.

SECTION 2.05. *Fees.* (a) The Borrowers agree, jointly and severally, to pay to each Lender, through the Administrative Agent, on the last day of March, June, September and December in each year and on each date on which the Commitment of such Lender shall expire or be terminated as provided herein, a commitment fee (a "*Commitment Fee*") equal to the Applicable Spread *per annum* in effect from time to time on the daily unused amount of the

Commitment of such Lender during the preceding quarter (or other period commencing on the Effective Date or ending on the Maturity Date or the date on which the Commitments of such Lender shall expire or be terminated). All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fees due to each Lender shall commence to accrue on the Effective Date and shall cease to accrue on the date on which the Commitment of such Lender shall expire or be terminated as provided herein.

(b) The Borrowers agree, jointly and severally, to pay to the Administrative Agent the fees set forth in the Fee Letter at the times and in the amounts specified therein (the “**Administrative Agent Fees**”).

(c) The Borrowers agree, jointly and severally, to pay (i) to each Lender, through the Administrative Agent, on the last day of March, June, September and December of each year and on the date on which the Commitment of such Lender shall be terminated as provided herein, a fee (an “**L/C Participation Fee**”) calculated on such Lender’s Applicable Percentage of the daily aggregate L/C Exposure (excluding the portion thereof attributable to unreimbursed L/C Disbursements) during the preceding quarter (or shorter period commencing on the Effective Date or ending on the Maturity Date or the date on which all Letters of Credit have been canceled or have expired and the Commitments of all Lenders shall have been terminated) at a rate *per annum* equal to the Applicable Spread from time to time used to determine the interest rate on Eurodollar Loans pursuant to Section 2.06(b) and (ii) to each Issuing Bank, for its own account, a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, payable in the amounts and at the times separately agreed upon in writing by any Borrower and such Issuing Bank (the “**Issuing Bank Fees**”), as well as such Issuing Bank’s standard fees with respect to the issuance, amendment, renewal, transfer or extension of any such Letter of Credit or the processing of drawings thereunder; *provided, however*, that any such agreement between any Borrower and such Issuing Bank may set forth the L/C Issuing Bank Sublimit for all Letters of Credit at any one time outstanding that such Issuing Bank will issue hereunder, and notwithstanding anything in this Agreement to the contrary, the obligation of such Issuing Bank to issue Letters of Credit hereunder shall be subject to such L/C Issuing Bank Sublimit.

(d) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that the Issuing Bank Fees shall be paid directly to the applicable Issuing Banks. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.06. *Interest on Loans.* (a) Subject to the provisions of Section 2.07, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when the Alternate Base Rate is determined by reference to the Prime Rate and over a year of 360 days at all other times) at a rate *per annum* equal to the Alternate Base Rate plus the Applicable Spread in effect from time to time.

(b) Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate *per annum* equal to the Adjusted LIBO Rate for the

Interest Period in effect for such Borrowing plus the Applicable Spread in effect from time to time.

(c) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. The applicable Alternate Base Rate, Adjusted LIBO Rate and Applicable Spread for each Interest Period or day within an Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.07. *Default Interest.* If either Borrower shall default in the payment of the principal of or interest on any Loan or any other amount becoming due hereunder, by acceleration or otherwise, or under any other Loan Document, such Borrower shall on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount to but excluding the date of actual payment (after as well as before judgment) (a) in the case of overdue principal, at the rate otherwise applicable to such Loan pursuant to Section 2.06 plus 2.00% *per annum* and (b) in all other cases, at a rate *per annum* (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when determined by reference to the Prime Rate and over a year of 360 days at all other times) equal to the sum of the Alternate Base Rate plus the Applicable Spread in effect from time to time plus 2.00%.

SECTION 2.08. *Alternate Rate of Interest.* In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a Eurodollar Borrowing the Administrative Agent shall have determined that dollar deposits in the principal amounts of the Loans comprising such Borrowing are not generally available in the London interbank market, or that the rates at which such dollar deposits are being offered will not adequately and fairly reflect the cost to any Lender of making or maintaining its Eurodollar Loan during such Interest Period, or that reasonable means do not exist for ascertaining the LIBO Rate, the Administrative Agent shall, as soon as practicable thereafter, give written or facsimile notice of such determination to the Borrowers and the Lenders. In the event of any such determination, until the Administrative Agent shall have advised the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, any request by either Borrower for a Eurodollar Borrowing pursuant to Section 2.03 shall be deemed to be a request for an ABR Borrowing. Each determination by the Administrative Agent hereunder shall be conclusive absent manifest error .

SECTION 2.09. *Termination and Reduction of Commitments.* (a) The Commitments and the L/C Commitment shall automatically terminate on the Maturity Date.

(b) Upon at least three Business Days' prior irrevocable written or facsimile notice to the Administrative Agent, the Borrowers may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Commitments; *provided, however*, that (i) each partial reduction of the Commitments shall be in an integral multiple of \$1,000,000 and in a minimum amount of \$5,000,000 and (ii) the Total Commitment shall not be reduced to an amount that is less than the Aggregate Credit Exposure at the time; *provided* that a notice of termination of the Commitments delivered by the Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities or debt financing (such notice to specify the proposed effective date), in which case such notice may be revoked by the Borrowers (by

notice to the Administrative Agent on or prior to such specified effective date) if such condition is not satisfied and the Borrowers shall indemnify the Lenders in accordance with Section 2.14 in connection therewith.

(c) Each reduction in the Commitments hereunder shall be made ratably among the Lenders in accordance with their respective Commitments. The Borrowers shall pay to the Administrative Agent for the account of the applicable Lenders, on the date of each termination or reduction, the Commitment Fees on the amount of the Commitments so terminated or reduced accrued to but excluding the date of such termination or reduction.

SECTION 2.10. *Conversion and Continuation of Borrowings.* The applicable Borrower shall have the right at any time upon prior irrevocable notice to the Administrative Agent (a) not later than 12:00 (noon), New York City time, one Business Day prior to conversion, to convert any Eurodollar Borrowing into an ABR Borrowing, (b) not later than 11:00 a.m., New York City time, three Business Days prior to conversion or continuation, to convert any ABR Borrowing into a Eurodollar Borrowing or to continue any Eurodollar Borrowing as a Eurodollar Borrowing for an additional Interest Period, and (c) not later than 11:00 a.m., New York City time, three Business Days prior to conversion, to convert the Interest Period with respect to any Eurodollar Borrowing to another permissible Interest Period, subject in each case to the following:

(i) each conversion or continuation shall be made pro rata among the Lenders in accordance with the respective principal amounts of the Loans comprising the converted or continued Borrowing;

(ii) if less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall satisfy the limitations specified in Sections 2.02(a) and 2.02(b) regarding the principal amount and maximum number of Borrowings of the relevant Type;

(iii) each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Loan of such Lender resulting from such conversion and reducing the Loan (or portion thereof) of such Lender being converted by an equivalent principal amount; accrued interest on any Eurodollar Loan (or portion thereof) being converted shall be paid by such Borrower at the time of conversion;

(iv) if any Eurodollar Borrowing is converted at a time other than the end of the Interest Period applicable thereto, such Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Section 2.14;

(v) any portion of a Borrowing maturing in less than one month may not be converted into or continued as a Eurodollar Borrowing;

(vi) any portion of a Eurodollar Borrowing that cannot be converted into or continued as a Eurodollar Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing; and

(vii) upon notice to the Borrowers from the Administrative Agent given at the request of the Required Lenders, after the occurrence and during the continuance of a Default or Event of Default, no outstanding Loan may be converted into, or continued as, a Eurodollar Loan.

Each notice pursuant to this Section 2.10 shall be irrevocable and shall refer to this Agreement and specify (A) the identity and amount of the Borrowing that the applicable Borrower requests be converted or continued, (B) whether such Borrowing is to be converted to or continued as a Eurodollar Borrowing or an ABR Borrowing, (C) if such notice requests a conversion, the date of such conversion (which shall be a Business Day) and (D) if such Borrowing is to be converted to or continued as a Eurodollar Borrowing, the Interest Period with respect thereto. If no Interest Period is specified in any such notice with respect to any conversion to or continuation as a Eurodollar Borrowing, the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall advise the Lenders of any notice given pursuant to this Section 2.10 and of each Lender's portion of any converted or continued Borrowing. If a Borrower shall not have given notice in accordance with this Section 2.10 to continue any Borrowing into a subsequent Interest Period (and shall not otherwise have given notice in accordance with this Section 2.10 to convert such Borrowing), such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be continued into an ABR Borrowing.

SECTION 2.11. *Optional Prepayment.* (a) Each Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, upon written or facsimile notice (or telephone notice promptly confirmed by written or facsimile notice) to the Administrative Agent before 12:00 (noon), New York City time (i) in the case of any prepayment of a Eurodollar Borrowing, at least three Business Days prior to the date designated for such prepayment or (ii) in the case of any prepayment of an ABR Borrowing, on the date of such prepayment; *provided, however*, that each partial prepayment shall be in an amount that is (x) in the case of any partial prepayment of a Eurodollar Borrowing, an integral multiple of \$1,000,000 and not less than \$5,000,000 or (y) in the case of any partial prepayment of an ABR Borrowing, an integral multiple of \$1,000 and not less than \$100,000.

(b) In the event of a termination of all the Commitments, each Borrower shall repay or prepay all of its outstanding Borrowings on the date of such termination, together with accrued interest to but excluding the date of such payment. In the event of any partial reduction of the Commitments, then (i) at or prior to the effective date of such reduction or termination, the Administrative Agent shall notify the Borrowers and the Lenders of the Aggregate Credit Exposure after giving effect thereto and (ii) if the Aggregate Credit Exposure would exceed the Total Commitment after giving effect to such reduction or termination, then the Borrowers shall, on the date of such reduction or termination, repay or prepay Borrowings in an amount sufficient to eliminate such excess.

(c) Each notice of prepayment shall specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid, shall be irrevocable and shall commit the applicable Borrower to prepay such Borrowing by the amount stated therein on the date stated therein; *provided*, that a notice of prepayment delivered by any Borrower may state

that such notice is conditioned upon the effectiveness of other credit facilities or debt financing (such notice to specify the proposed effective date), in which case such notice may be revoked by such Borrower (by notice to the Administrative Agent on or prior to such specified effective date) if such condition is not satisfied and the Borrowers shall indemnify the Lenders in accordance with Section 2.14 in connection therewith. All prepayments under this Section 2.11 shall be subject to Section 2.14 but otherwise without premium or penalty. All prepayments under this Section 2.11 (other than prepayments of ABR Loans prior to the Maturity Date) shall be accompanied by accrued interest on the principal amount being prepaid to but excluding the date of payment.

**SECTION 2.12. *Reserve Requirements; Change in Circumstances.***

(a) Notwithstanding any other provision of this Agreement, if after the date of this Agreement, but prior to the first date on which the events described in clauses (A), (B), (C) and (D) of paragraph (d) of this Section 2.12 shall have occurred (the “***Obligation Termination Date***”), any Change in Law shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of or credit extended by any Lender or any Issuing Bank or shall impose on such Lender or such Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein or subject any Recipient to any Taxes (other than (i) Taxes imposed on or with respect to any payment made by any Loan Party under any Loan Document, which shall be solely governed by Section 2.18, (ii) Other Taxes, and (iii) Other Connection Taxes on gross or net income, or profits or receipts (including value-added or similar Taxes, franchise Taxes and branch profits Taxes) of a Recipient) on its loans, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making or maintaining any Eurodollar Loan or increase the cost to any Lender, any Issuing Bank or such other Recipient of issuing or maintaining any Letter of Credit or purchasing or maintaining a participation therein or to reduce the amount of any sum received or receivable by such Lender, such Issuing Bank or such other Recipient (whether of principal, interest or otherwise) by an amount deemed by such Lender, such Issuing Bank or such other Recipient to be material, then the applicable Borrower will pay to such Lender, such Issuing Bank or such other Recipient, as the case may be, upon demand such additional amount or amounts as will compensate such Lender, such Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or any Issuing Bank shall have determined that the adoption after the Effective Date, but prior to the Obligation Termination Date, of any law, rule, regulation, agreement or guideline regarding capital adequacy or liquidity requirements, or any change after the Effective Date, but prior to the Obligation Termination Date, in any such law, rule, regulation, agreement or guideline (whether such law, rule, regulation, agreement or guideline has been adopted) or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance by any Lender (or any lending office of such Lender) or any Issuing Bank or any Lender’s or any Issuing Bank’s holding company with any request or directive regarding capital adequacy or liquidity requirements (whether or not having the force of law) of any Governmental Authority has or would have the effect of reducing the rate of return on such Lender’s or such Issuing Bank’s capital or on the capital of such Lender’s or such Issuing Bank’s holding company, if any, as a consequence of

this Agreement or the Loans made or participation in Letters of Credit purchased by such Lender pursuant hereto or the Letters of Credit issued by such Issuing Bank pursuant hereto to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such applicability, adoption, change or compliance (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy) by an amount deemed by such Lender or such Issuing Bank to be material, then from time to time the applicable Borrower shall pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered. For the avoidance of doubt and notwithstanding anything herein to the contrary, this Section 2.12(b) shall apply to (x) the Dodd-Frank Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith concerning capital adequacy or liquidity requirements and (y) all requests, rules, regulations, guidelines or directives concerning capital adequacy or liquidity requirements promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, regardless of the date enacted, adopted, issued or implemented.

(c) A certificate of any Lender or any Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as applicable, as specified in paragraph (a) or (b) above shall be delivered to the applicable Borrower and shall be conclusive absent manifest error. The applicable Borrower shall pay such Lender or such Issuing Bank the amount shown as due on any such certificate delivered by it within 30 days after its receipt of the same.

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation under this Section 2.12 for any costs incurred or reduction suffered with respect to any date so long as such Lender or such Issuing Bank, as applicable, shall have notified the applicable Borrower that it will demand compensation for such costs or reduction under paragraph (c) above, not more than 90 days after the later of (i) such date and (ii) the date on which such Lender or such Issuing Bank, as applicable, shall have become aware of such costs or reduction. Notwithstanding the foregoing, no notification contemplated by the preceding sentence shall in any event be made more than 30 days after the date that (A) all the Obligations have been indefeasibly paid in full, (B) the Lenders have no further commitment to lend to either of the Borrowers under this Agreement, (C) the L/C Exposure has been reduced to zero and (D) the Issuing Banks have no further obligation to issue Letters of Credit under this Agreement. The protection of this Section 2.12 shall be available to each Lender and each Issuing Bank regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, agreement, guideline or other change or condition that shall have occurred or been imposed.

SECTION 2.13. *Change in Legality.* (a) Notwithstanding any other provision of this Agreement, if, after the date hereof, any Change in Law shall make it unlawful for any

Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to the Borrowers and to the Administrative Agent:

(i) such Lender may declare that Eurodollar Loans will not thereafter (for the duration of such unlawfulness) be made by such Lender hereunder (or be continued for additional Interest Periods) and ABR Loans will not thereafter (for such duration) be converted into Eurodollar Loans, whereupon any request for a Eurodollar Borrowing (or to convert an ABR Borrowing to a Eurodollar Borrowing or to continue a Eurodollar Borrowing for an additional Interest Period) shall, as to such Lender only, be deemed a request for an ABR Loan (or a request to continue an ABR Loan as such or to convert a Eurodollar Loan into an ABR Loan, as the case may be), unless such declaration shall be subsequently withdrawn; and

(ii) such Lender may require that all outstanding Eurodollar Loans made by it be converted to ABR Loans, in which event all such Eurodollar Loans shall be automatically converted to ABR Loans as of the effective date of such notice as provided in paragraph (b) below.

In the event any Lender shall exercise its rights under (i) or (ii) above, all payments and prepayments of principal that would otherwise have been applied to repay the Eurodollar Loans that would have been made by such Lender or the converted Eurodollar Loans of such Lender shall instead be applied to repay the ABR Loans made by such Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(b) For purposes of this Section 2.13, a notice to the Borrowers by any Lender shall be effective as to each Eurodollar Loan made by such Lender, if lawful, on the last day of the Interest Period currently applicable to such Eurodollar Loan; in all other cases such notice shall be effective on the date of receipt by the Borrowers.

SECTION 2.14. *Indemnity.* Each Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurodollar Loan to such Borrower prior to the end of the Interest Period in effect therefor, (ii) the conversion of any Eurodollar Loan to such Borrower to an ABR Loan, or the conversion of the Interest Period with respect to any Eurodollar Loan to such Borrower, in each case other than on the last day of the Interest Period in effect therefor, or (iii) any Eurodollar Loan to be made by such Lender to such Borrower (including any Eurodollar Loan to be made pursuant to a conversion or continuation under Section 2.10) not being made after notice of such Loan shall have been given by such Borrower hereunder (any of the events referred to in this clause (a) being called a "**Breakage Event**") or (b) any default by such Borrower in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurodollar Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such

Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 2.14 shall be delivered to the applicable Borrower and shall be conclusive absent manifest error.

SECTION 2.15. *Pro Rata Treatment.* Except as required under Section 2.13, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans, each payment of the Commitment Fees and the L/C Participation Fees, each reduction of the Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type shall be allocated pro rata among the Lenders in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans). Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount.

SECTION 2.16. *Sharing of Setoffs.* Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against either Borrower, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans or L/C Disbursement as a result of which the unpaid principal portion of its Loans and participation in L/C Disbursements shall be proportionately less than the unpaid principal portion of the Loans and participation in L/C Disbursements of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans and L/C Exposure of such other Lender, so that the aggregate unpaid principal amount of the Loans and L/C Exposure and participation in Loans and L/C Exposure held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans and L/C Exposure then outstanding as the principal amount of its Loans and L/C Exposure prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans and L/C Exposure outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; *provided, however*, that if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.16 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. Each Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Loan or L/C Disbursement deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by such Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan directly to such Borrower in the amount of such participation.

SECTION 2.17. *Payments.* (a) Each Borrower shall make each payment (including principal of or interest on any Borrowing or any L/C Disbursement or any Fees or other amounts) hereunder and under any other Loan Document not later than 2:00 p.m., New

York City time, on the date when due in immediately available dollars, without setoff, defense or counterclaim. Each such payment (other than Issuing Bank Fees, which shall be paid directly to each applicable Issuing Bank if other than the Administrative Agent) shall be made to the Administrative Agent at its offices at 1221 Avenue of the Americas, New York, NY 10020. Notwithstanding the foregoing, each request by El Paso or the Administrative Agent to the Trustee for a payment under this Agreement must be by an authorized officer of the requesting party and must contain wire instructions for the account to which that payment is to be made.

(b) Whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

SECTION 2.18. *Taxes.* (a) *Withholding of Taxes; Gross-Up.* Each payment by any Loan Party under the Loan Documents shall be made without withholding for any Taxes, unless such withholding is required by any law. If any Withholding Agent determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Withholding Agent may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by the Loan Parties shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the applicable Recipient receives the amount it would have received had no such withholding been made.

(b) *Payment of Other Taxes by the Borrower.* The Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of Other Taxes.

(c) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes by any Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) *Indemnification by the Borrowers.* The Borrowers shall jointly and severally indemnify each Recipient for any Indemnified Taxes that are paid or payable by such Recipient in connection with any Loan Document (including Indemnified Taxes with respect to amounts paid or payable under this Section 2.18(d)), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.18(d) shall be paid within 15 days after the Recipient delivers to any Borrower a certificate stating the amount of any Indemnified Taxes so paid or payable by such Recipient. Such certificate shall be conclusive of the amount so paid or payable absent manifest error. Such Recipient shall deliver a copy of such certificate to the Administrative Agent.

(e) *Indemnification by the Lenders.* Each Lender shall severally indemnify the Administrative Agent for any Taxes (but, in the case of any Indemnified Taxes, only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so) attributable to such Lender that are paid or payable by the Administrative Agent in connection with any Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.18(e) shall be paid within 10 days after the Administrative Agent delivers to the applicable Lender a certificate stating the amount of Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) *Status of Lenders.* (i) Any Lender that is entitled to an exemption from, or reduction of, any applicable withholding Tax with respect to any payments under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without, or at a reduced rate of, withholding. In addition, any Lender, if requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.18(f)(ii) and (iii) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Upon the reasonable request of a Borrower or the Administrative Agent, any Lender shall update any form or certification previously delivered pursuant to this Section 2.18(f). If any form or certification previously delivered pursuant to this Section 2.18(f) expires or becomes obsolete or inaccurate in any respect with respect to a Lender, such Lender shall promptly (and in any event within 10 days after such expiration, obsolescence or inaccuracy) notify the Borrowers and the Administrative Agent in writing of such expiration, obsolescence or inaccuracy and update the form or certification if it is legally eligible to do so.

(ii) Without limiting the generality of the foregoing, each Lender shall, if it is legally eligible to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies reasonably requested by the Borrowers and the Administrative Agent) on or prior to the date on which such Lender becomes a party hereto, duly completed and executed copies of whichever of the following is applicable:

(A) in the case of a Lender that is a U.S. Person, IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party (1) with respect to payments of interest under any Loan Document, the applicable IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (2) with respect to any other applicable payments under this Agreement, the applicable IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(C) in the case of a Non-U.S. Lender for whom payments under this Agreement constitute income that is includible in gross income for U.S. Federal income tax purposes because it is effectively connected with such Lender’s conduct of a trade or business in the United States, IRS Form W-8ECI;

(D) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code both (1) the applicable IRS Form W-8BEN or IRS Form W-8BEN-E and (2) a certificate (a “***U.S. Tax Certificate***”) to the effect that such Lender is not (a) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (b) a “10 percent shareholder” of either Borrower within the meaning of Section 881(c)(3)(B) of the Code (c) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (d) conducting a trade or business in the United States with which the relevant interest payments are effectively connected (or the interest payments are effectively connected but are not includible in the Non-U.S. Lender’s gross income for U.S. Federal income tax purposes under an income tax treaty);

(E) in the case of a Non-U.S. Lender that is not the beneficial owner of payments made under this Agreement (including a partnership or a participating Lender) (1) an IRS Form W-8IMY on behalf of itself and (2) the relevant forms prescribed in clauses (A), (B), (C) and (D) of this paragraph (f)(ii) that would be required of each such beneficial owner or partner of such partnership if such beneficial owner or partner were a Lender; *provided, however*, that if the Lender is a partnership and one or more of its partners are claiming the exemption for portfolio interest under Section 881(c) of the Code, such Lender may provide a U.S. Tax Certificate on behalf of such partners; or

(F) any other form prescribed by law as a basis for claiming exemption from, or a reduction of, U.S. Federal withholding Tax together with such supplementary documentation necessary to enable the Borrowers or the Administrative Agent to determine the amount of Tax (if any) required by law to be withheld.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the

Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

(g) *Treatment of Certain Refunds.* If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.18 (including additional amounts paid pursuant to this Section 2.18), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid to such indemnified party pursuant to the previous sentence (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.18(g), in no event will any indemnified party be required to pay any amount to any indemnifying party pursuant to this Section 2.18(g) if such payment would place such indemnified party in a less favorable position (on a net after-Tax basis) than such indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.18(g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the indemnifying party or any other person.

(h) *Issuing Bank.* For purposes of Section 2.18(e) and (f), the term "Lender" includes each Issuing Bank.

SECTION 2.19. *Replacement or Termination of Lenders Under Certain Circumstances; Duty to Mitigate.* (a) In the event (i) any Lender or any Issuing Bank delivers a certificate requesting compensation pursuant to Section 2.12, (ii) any Lender or any Issuing Bank delivers a notice described in Section 2.13, (iii) either Borrower is required to pay any additional amount or to make any indemnification payment to any Lender or any Issuing Bank or any Governmental Authority on account of any Lender or any Issuing Bank pursuant to Section 2.18, (iv) any Lender does not consent to the Borrowers' request for an extension of the Initial Maturity Date pursuant to Section 2.22 (but only if the Required Lenders have consented to such extension), (v) any Lender refuses to consent to any amendment, waiver or other modification of any Loan Document requested by either Borrower that requires the consent of a greater percentage of the Lenders than the Required Lenders and such amendment, waiver or other modification is consented to by the Required Lenders or (vi) any Lender is a Defaulting Lender, the Borrowers may, at their sole expense and effort (including with respect to the processing and recordation fee referred to in Section 10.04(b)), upon notice to such Lender or such Issuing Bank and the Administrative Agent, either (A) except in the case of clauses (iv) and (v) above, so long as the

Applicable Rating of either Rating Agency shall not be below BBB- or Baa3, as applicable, terminate the Commitment of such Lender and repay on the termination date specified in the applicable notice all obligations of the Borrowers owing to such Lender under this Agreement and the other Loan Documents as of such date (including, without limitation, any amounts under Section 2.12, 2.14 or 2.18) or (B) require such Lender or such Issuing Bank to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all of its interests, rights and obligations under this Agreement to one or more assignees that shall assume such assigned obligations (which assignee(s) may be another Lender, if a Lender accepts such assignment); *provided* that (x) such termination or such transfer and assignment (as the case may be) shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority having jurisdiction, (y) with respect to any such transfer and assignment pursuant to clause (B) above, except in connection with an assignment to another Lender or an Affiliate thereof, the Borrowers shall have received the prior written consent of the Administrative Agent and the remaining Issuing Banks, which consent shall not unreasonably be withheld, and (z) the Borrowers or such assignee shall have paid to the affected Lender or the affected Issuing Bank, as the case may be, in immediately available funds an amount equal to the sum of the principal of and interest accrued to the date of such payment on the outstanding Loans or L/C Disbursements of such Lender or such Issuing Bank, respectively, plus all Fees and other amounts accrued for the account of such Lender or such Issuing Bank hereunder (including any amounts under Section 2.12 and Section 2.14); *provided further* that, if prior to any such termination or any such transfer and assignment (as the case may be) the circumstances or event that resulted in such Lender's or such Issuing Bank's claim for compensation under Section 2.12 or notice under Section 2.13 or the amounts paid pursuant to Section 2.18, as the case may be, cease to cause such Lender or such Issuing Bank to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in Section 2.13, or cease to result in amounts being payable under Section 2.18, as the case may be (including as a result of any action taken by such Lender or such Issuing Bank pursuant to paragraph (b) below), or if such Lender or such Issuing Bank shall waive its right to claim further compensation under Section 2.12 in respect of such circumstances or event or shall withdraw its notice under Section 2.13 or shall waive its right to further payments under Section 2.18 in respect of such circumstances or event or shall consent to the proposed extension, waiver, amendment or other modification, as the case may be, then (1) the Borrowers shall not have the right to terminate the Commitment of such Lender pursuant to clause (A) above and (2) such Lender or such Issuing Bank shall not thereafter be required to make any such transfer and assignment hereunder, as applicable.

(b) If (i) any Lender or any Issuing Bank shall request compensation under Section 2.12, (ii) any Lender or any Issuing Bank delivers a notice described in Section 2.13 or (iii) either Borrower is required to pay any additional amount to any Lender or any Issuing Bank or any Governmental Authority on account of any Lender or any Issuing Bank pursuant to Section 2.18, then such Lender or such Issuing Bank shall use reasonable efforts (which shall not require such Lender or such Issuing Bank to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any disadvantage or burden deemed by it to be significant) (x) to file any certificate or document reasonably requested in writing by the Borrowers or (y) to assign its rights and delegate and transfer its obligations hereunder to another of its offices, branches or affiliates, if such filing or assignment would reduce its claims

for compensation under Section 2.12 or enable it to withdraw its notice pursuant to Section 2.13 or would reduce amounts payable pursuant to Section 2.18, as the case may be, in the future. The Borrowers hereby agree, jointly and severally, to pay all reasonable costs and expenses incurred by any Lender or any Issuing Bank in connection with any such filing or assignment, delegation and transfer.

**SECTION 2.20. *Letters of Credit.*** (a) *General.* Each of the Borrowers may request the issuance of a Letter of Credit, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, appropriately completed, for the account of such Borrower, at any time and from time to time while the Commitments remain in effect and, in the case of the Trustee only, if the Trust Termination Date has not occurred. This Section 2.20 shall not be construed to impose an obligation upon any Issuing Bank to issue any Letter of Credit that is inconsistent with the terms and conditions of this Agreement.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions; Application.* In order to request the issuance of a Letter of Credit (or to amend, renew or extend an existing Letter of Credit), the requesting Borrower shall hand deliver or telecopy to an Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, the date of issuance, amendment, renewal or extension, the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) below), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare such Letter of Credit. Subject to Section 2.20(k), a Letter of Credit shall be issued, amended, renewed or extended for the account of a Borrower only if, and upon issuance, amendment, renewal or extension of each Letter of Credit for the account of such Borrower, such Borrower shall be deemed to represent and warrant that, after giving effect to such issuance, amendment, renewal or extension, the Aggregate Credit Exposure shall not exceed the Total Commitment. If requested by any Issuing Bank, the requesting Borrower shall also submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any letter of credit application or other agreement submitted by the requesting Borrower to, or entered into by such Borrower with, any Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. In addition, as of the Effective Date, subject to the satisfaction of the conditions set forth in Sections 4.01 and 4.02, each of the Existing Letters of Credit shall be deemed to be issued under this Agreement as a Letter of Credit, and the participations of the Lenders therein shall be re-determined on the basis of their respective Applicable Percentages pursuant to Section 2.20(d).

(c) *Expiration Date.* Each Letter of Credit shall expire at the close of business on the earlier of the date one year after the date of the issuance of such Letter of Credit and the date that is five Business Days prior to the Maturity Date, unless such Letter of Credit expires by its terms on an earlier date. Each Letter of Credit may, upon the request of the applicable Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of 12 months or less (but not beyond the date that is five Business Days prior to the Maturity Date) unless the applicable Issuing Bank notifies the beneficiary

thereof at least 30 days prior to the then-applicable expiry date that such Letter of Credit will not be renewed.

(d) *Participation.* By the issuance of a Letter of Credit by any Issuing Bank and without any further action on the part of such Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Lender, and each such Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit, effective upon the issuance of such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such Lender's Applicable Percentage of each L/C Disbursement made by such Issuing Bank and not reimbursed by the Trustee or El Paso, as the case may be, forthwith on the date due as provided in Section 2.02(f). Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) *Reimbursement.* If any Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, the Trustee or El Paso, as the case may be, shall pay to the Administrative Agent, for the account of such Issuing Bank, an amount equal to such L/C Disbursement not later than 4:00 p.m., New York City time on the Business Day on which the Trustee or El Paso, as the case may be, shall have received notice from such Issuing Bank that payment of such draft will be made, or, if the Trustee or El Paso, as the case may be, shall have received such notice later than 10:00 a.m., New York City time, on any Business Day, not later than 1:00 p.m., New York City time, on the immediately following Business Day. Any failure by the Trustee or El Paso, as the case may be, to make a payment under this Section 2.20(e) shall not constitute a Default or an Event of Default if the applicable Issuing Bank shall have been reimbursed for such L/C Disbursement out of the proceeds of a deemed Borrowing pursuant to Section 2.02(f).

(f) *Obligations Absolute.* The obligations of the Trustee or El Paso, as the case may be, to reimburse L/C Disbursements as provided in paragraph (e) above shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under any and all circumstances whatsoever, and irrespective of:

(i) any lack of validity or enforceability of any Letter of Credit or any other Loan Document, or any term or provision therein;

(ii) any amendment or waiver of or any consent to departure from all or any of the provisions of any Letter of Credit or any other Loan Document;

(iii) the existence of any claim, setoff, defense or other right that the Trustee, El Paso or any other party guaranteeing, or otherwise obligated with, the Trustee or El Paso, as the case may be, any subsidiary or other Affiliate thereof or any other person may at any time have against the beneficiary under any Letter of Credit, any Issuing Bank, the Administrative Agent or any Lender or any other person, whether in connection with this

Agreement, any other Loan Document or any other related or unrelated agreement or transaction;

(iv) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; and; and

(vi) any other act or omission to act or delay of any kind of any Issuing Bank, any Lender, the Administrative Agent or any other person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.20, constitute a legal or equitable discharge of the obligations of the Trustee or El Paso, as the case may be, hereunder.

Without limiting the generality of the foregoing, it is expressly understood and agreed that the absolute and unconditional obligation of the Trustee or El Paso, as the case may be, hereunder to reimburse L/C Disbursements will not be excused by the gross negligence or willful misconduct of any Issuing Bank. However, the foregoing shall not be construed to excuse any Issuing Bank from liability to the Trustee or El Paso, as the case may be, to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Trustee or El Paso, as the case may be, to the extent permitted by applicable law) suffered by the Trustee or El Paso, as the case may be, that are caused by such Issuing Bank's gross negligence or willful misconduct (as determined by the final and non-appealable judgment of a court of competent jurisdiction) in determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof; it is understood that each Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and, in making any payment under any Letter of Credit (i) each Issuing Bank's exclusive reliance on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever and (ii) any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute willful misconduct or gross negligence of such Issuing Bank.

(g) *Disbursement Procedures.* Each Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit issued by such Issuing Bank. Each Issuing Bank shall as promptly as possible give telephonic notification, confirmed by telecopy, to the Administrative Agent and the Trustee or El Paso, as the case may be, of such demand for payment and whether such Issuing Bank has made

or will make an L/C Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Trustee or El Paso, as the case may be, of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such L/C Disbursement. The Administrative Agent shall promptly give each Lender notice thereof.

(h) *Interim Interest.* If any Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, then, unless the Trustee or El Paso, as the case may be, shall reimburse such L/C Disbursement in full on such date, the unpaid amount thereof shall bear interest for the account of such Issuing Bank, for each day from and including the date of such L/C Disbursement, to but excluding the earlier of the date of payment by the Trustee or El Paso, as the case may be, or the date on which such Issuing Bank is reimbursed by the Lenders pursuant to Section 2.02(f), at the rate *per annum* that would apply to such amount if such amount were an ABR Loan.

(i) *Addition, Resignation or Removal of an Issuing Bank.*

(i) Any Lender may become an additional Issuing Bank hereunder pursuant to a written agreement among the Borrowers, the Administrative Agent and such Lender and such agreement shall specify such additional Issuing Bank's L/C Issuing Bank Sublimit. The Administrative Agent shall notify the Lenders of any such additional Issuing Bank.

(ii) Any Issuing Bank may resign at any time by giving 180 days' prior written notice to the Administrative Agent, the Lenders and the Borrowers, and may be removed at any time by the Borrowers by notice to such Issuing Bank, the Administrative Agent and the Lenders. Subject to the next succeeding paragraph (j), upon the acceptance of any appointment as an Issuing Bank hereunder by a Lender that shall agree to serve as a successor Issuing Bank to any retiring Issuing Bank, such successor shall succeed to and become vested with all the interests, rights and obligations of such retiring Issuing Bank and such retiring Issuing Bank shall be discharged from its obligations to issue additional Letters of Credit hereunder. At the time such removal or resignation shall become effective, the Borrowers shall pay all accrued and unpaid fees owing to the retiring Issuing Bank pursuant to Section 2.05(c)(ii). The acceptance of any such appointment as a new Issuing Bank hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrowers and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Bank under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to such previous Issuing Bank shall be deemed to refer to such successor or to any applicable previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the resignation or removal of any Issuing Bank hereunder, the retiring Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation or removal, but shall not be required to issue additional Letters of Credit.

(j) *Cash Collateralization.* If any Event of Default shall occur and be continuing or, with respect to the Trustee L/C Exposure only, the Trust Termination Date shall occur, the Trustee or El Paso, as the case may be, shall, on the Business Day it receives notice

from the Administrative Agent or the Required Lenders thereof and of the amount to be deposited, deposit in an account with the Administrative Agent, for the benefit of the Lenders, an amount in cash equal to the Trustee L/C Exposure or the El Paso L/C Exposure, as the case may be, as of such date. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits in Permitted Investments, which investments shall be made at the option and sole discretion of the Administrative Agent, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall (i) automatically be transferred to the Administrative Agent and be applied by the Administrative Agent to reimburse the applicable Issuing Bank for L/C Disbursements for which it has not been reimbursed, (ii) be held for the satisfaction of the reimbursement obligations of the Trustee or El Paso, as the case may be, for the Trustee L/C Exposure or the El Paso L/C Exposure, as the case may be, at such time and (iii) if the maturity of the Loans has been accelerated, be transferred to the Administrative Agent and be applied to satisfy the Obligations (of both the Trustee and El Paso). If the Trustee or El Paso, as the case may be, is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, (x) such amount (to the extent not applied as aforesaid) shall be returned to the Trustee or El Paso, as the case may be, within three Business Days after all Events of Default have been cured or waived and (y) at any time that the amount of such Cash Collateral exceeds the Trustee L/C Exposure or El Paso L/C Exposure, as the case may be, the amount of such excess shall be promptly returned to the Trustee or El Paso, as the case may be.

(k) *L/C Commitments.* Notwithstanding any provision to the contrary contained herein, an Issuing Bank shall be under no obligation to issue, amend, extend, reinstate or renew any Letter of Credit if:

(i) after giving effect to such issuance, amendment, extension, reinstatement or renewal, (A) the aggregate face amount of outstanding Letters of Credit issued by such Issuing Bank would exceed such Issuing Bank's L/C Issuing Bank Sublimit, (B) the aggregate L/C Exposure shall exceed the L/C Sublimit or (C) the Aggregate Credit Exposure shall exceed the Total Commitment;

(ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank shall prohibit, or any Governmental Authority shall request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense that was not applicable on the Effective Date and that such Issuing Bank in good faith deems material to it;

(iii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally;

(iv) except as otherwise agreed by the Administrative Agent and such Issuing Bank, such Letter of Credit is in an initial amount less than \$75,000;

(v) any Lender is at that time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the Borrowers or such Lender to eliminate such Issuing Bank's actual or potential Fronting Exposure (after giving effect to Section 2.24(a)(iv)) with respect to the Defaulting Lender arising from either such Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Exposure as to which such Issuing Bank has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(vi) in the case of any such amendment, (A) such Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

SECTION 2.21. *Increase of Commitments.* (a) El Paso may, by written notice to the Administrative Agent, request that the Total Commitment be increased by an aggregate amount not to exceed the Incremental Facility Amount at such time. Upon the receipt of such request by the Administrative Agent, the Administrative Agent shall deliver a copy thereof to each Lender. Such notice shall set forth the amount of the requested increase (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$10,000,000 or equal to the remaining Incremental Facility Amount) and the date on which such increase is requested to become effective (which shall be not less than 10 days nor more than 60 days after the date of such notice and which, in any event, must be on or prior to the Maturity Date). Any such increase in Commitments may be provided by one or more existing Lenders or by one or more banks or other entities that is not an existing Lender (any such bank or other entity that is not an existing Lender being called an "**Augmenting Lender**"); *provided, however*, that each Augmenting Lender shall be subject to the prior written approval of the Administrative Agent and each Issuing Bank (which approvals shall not be unreasonably withheld or delayed), and the Borrowers and each Augmenting Lender shall execute all such documentation as the Administrative Agent shall reasonably specify to evidence such Augmenting Lender's Commitment and/or its status as a Lender hereunder. Each Lender shall, by notice to El Paso and the Administrative Agent given not more than 10 days after the date of the Administrative Agent's notice, either agree to increase its Commitment by all or a portion of the offered amount (each Lender so agreeing being an "**Increasing Lender**") or decline to increase its Commitment (and any Lender that does not deliver such a notice within such period of 10 days shall be deemed to have declined to increase its Commitment). Any such increase may be made in an amount that is less than the increase requested by El Paso if El Paso is unable to arrange for, or chooses not to arrange for, Augmenting Lenders.

(b) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all actions as may be reasonably necessary to ensure that, after giving effect to any increase pursuant to this Section 2.21, the outstanding Loans (if any) are held by the Lenders in accordance with their new Applicable Percentages. This may be accomplished at the discretion of the Administrative Agent, following consultation with El Paso, (i) by requiring the outstanding Loans to be prepaid with the proceeds of a new Borrowing, (ii) by permitting the Borrowings

outstanding at the time of any increase in the Total Commitment pursuant to this Section 2.21 to remain outstanding until the last day of the respective Interest Periods therefor, even though the Lenders would hold the Loans comprising such Borrowings other than in accordance with their new Applicable Percentages, (iii) by requiring each Increasing Lender and Augmenting Lender to purchase by assignment from the other Lenders (in which case such other Lenders shall assign to the Increasing Lenders and Augmenting Lenders) such portion of the outstanding Loans, if any, owing to them as shall be designated by the Administrative Agent such that, after giving effect to all such purchases and assignments, the outstanding Loans owing to each Lender shall equal such Lender's Applicable Percentage of the aggregate amount of Loans owing to all Lenders or (iv) by any combination of the foregoing. Any prepayment described in this paragraph (b) shall be subject to Section 2.14, but shall otherwise be without premium or penalty. In addition, on the effective date of any such increase in the Total Commitment pursuant to this Section 2.21, each Increasing Lender and Augmenting Lender shall be deemed to have purchased by assignment from the other Lenders (and such other Lenders shall be deemed to have assigned to the Increasing Lenders and Augmenting Lenders) a portion of the participations (if any) then held by such other Lenders in the outstanding L/C Exposure, such that, after giving effect to all such deemed purchases and assignments, each Lender's L/C Exposure shall equal such Lender's Applicable Percentage of the aggregate L/C Exposure at such time.

(c) Notwithstanding the foregoing, no increase in the Total Commitment shall become effective under this Section 2.21 unless (i) on the date of such increase, the conditions set forth in paragraphs (b) and (c) of Section 4.01 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of El Paso, (ii) the Borrowers shall have received all consents, approvals and authorizations of, and shall have made all registrations and filings with, any Governmental Authority required in connection with such increase, each of which shall be in full force and effect and not subject to any appeal or stay, (iii) if requested, the Administrative Agent shall have received legal opinions, certificates and board resolutions consistent with those delivered on the Effective Date under paragraphs (a), (b) and (c) of Section 4.02, and (iv) the Borrowers shall have delivered to the Administrative Agent such other consents, authorizations, certificates and other documents as the Administrative Agent may reasonably request in connection with such increase (including, without limitation, any new or replacement Notes requested by the applicable Increasing Lenders or Augmenting Lenders pursuant to Section 2.04(e)).

SECTION 2.22. *Extension of Maturity Date.* Subject to the remaining provisions of this Section 2.22, this Agreement will terminate, and all Obligations shall be due and payable by the Borrowers, on September 13, 2023 (the "**Initial Maturity Date**"). Following the Effective Date, the Borrowers may make no more than two (2) elections to extend the Initial Maturity Date, for each such election, by one (1) additional year, on any anniversary of the Effective Date by giving the Administrative Agent, the Issuing Banks and the Lenders written notice of such election at least thirty (30) days (but not more than ninety (90) days) prior to the relevant anniversary of the Effective Date; *provided, however*, that the following conditions must be satisfied for such extension to be effected:

(a) the Borrowers must obtain the written consent of (i) the Required Lenders to such extension, which consent shall be given in their sole and absolute discretion, (ii) each Lender that will participate in this Agreement as extended (*provided*, that all such Lenders

constitute the Required Lenders), which consent shall be given in such Lender's sole and absolute discretion, and (iii) each Issuing Bank that will participate in this Agreement as extended, which consent shall be given in such Issuing Bank's sole and absolute discretion (it being understood and agreed that the L/C Commitment of any Issuing Bank that does not consent to such participation shall terminate on the then-scheduled Maturity Date applicable to such Issuing Bank, and the Borrowers shall repay all fees and other amounts payable to such Issuing Bank hereunder on such Maturity Date);

(b) there shall be no Default or Event of Default that has occurred and is continuing as of the effective date of such extension, both before and after giving effect to such extension;

(c) the representations and warranties of the Loan Parties set forth herein (other than the representations and warranties set forth in Sections 3.06 and 3.08(a)) and in the other Loan Documents shall be true and correct in all material respects on and as of the effective date of such extension with the same effect as though such representations and warranties had been made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date); and

(d) on or before the effective date of such extension, (i) El Paso shall deliver to the Administrative Agent a certificate, dated as of the effective date of such extension and signed by a Financial Officer of El Paso, certifying as to the accuracy of the matters set forth above in clauses (b) and (c) that pertain to El Paso or any of the Subsidiaries, and (ii) the Trustee shall deliver to the Administrative Agent a certificate, dated as of the effective date of such extension and signed by the Trustee, certifying as to the accuracy of the matters set forth above in clauses (b) and (c) that pertain to the Trustee.

If any Lender does not consent to the Borrowers' request for such an extension (each, a "***non-consenting Lender***"), the Borrowers will have the right to require such non-consenting Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all of its interests, rights and obligations under this Agreement to one or more assignees that shall assume such assigned obligations (which assignee(s) may be another Lender, if a Lender accepts such assignment), pursuant to Section 2.19. The Commitment of any non-consenting Lender that is not replaced by the Borrowers pursuant to Section 2.19 (including, without limitation, such non-consenting Lender's participation interest in any Letters of Credit and L/C Disbursements) shall terminate on the then-scheduled Maturity Date applicable to such non-consenting Lender, and the Borrowers shall repay the principal amount of all Loans, accrued interest thereon and all other amounts payable to such non-consenting Lender hereunder on such Maturity Date. For purposes of clarity, at any date of determination, this Agreement will have a term of no more than five (5) years, whether such determination is made before or after giving effect to any extension election made by the Borrowers.

SECTION 2.23. *Cash Collateral.* (a) *Obligation to Cash Collateralize.* At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any Issuing Bank (with a copy to the Administrative

Agent), each Borrower shall Cash Collateralize the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.24(a)(iv) and any Cash Collateral provided by such Defaulting Lender) with respect to the Trustee L/C Exposure or the El Paso L/C Exposure, as applicable, in an amount not less than the Minimum Collateral Amount.

(b) *Grant of Security Interest.* Each of the Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Banks, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of L/C Exposure, to be applied pursuant to paragraph (c) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) *Application.* Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section or Section 2.24 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Exposure (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) *Termination of Requirement.* Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section following (i) the elimination of the applicable Fronting Exposure (including by the termination of the Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and each Issuing Bank that there exists excess Cash Collateral; *provided* that, subject to Section 2.24, the person providing Cash Collateral and each Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

#### SECTION 2.24. *Defaulting Lenders.*

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

(i) *Waivers and Amendments.* Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 10.08.

(ii) *Defaulting Lender Waterfall.* Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise)

or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.06 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank hereunder; *third*, to Cash Collateralize the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.23; *fourth*, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Banks' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.23; *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided*, that if (x) such payment is a payment of the principal amount of any Loans or L/C Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Disbursements owed to, all Non-Defaulting Lenders or Issuing Banks (as the case may be) on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Exposure are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (iv) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *Commitment and L/C Fees.*

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive L/C Participation Fees for any period during which that Lender is a Defaulting Lender only to the

extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.23.

(C) With respect to any L/C Participation Fee not required to be paid to any Defaulting Lender pursuant to clause (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Exposure that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) *Reallocation of Participations to Reduce Fronting Exposure.* All or any part of such Defaulting Lender's participation in L/C Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 10.22, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) *Cash Collateral.* If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to the Borrowers hereunder or under law, Cash Collateralize the Issuing Banks' Fronting Exposure in accordance with the procedures set forth in Section 2.23.

(b) *Defaulting Lender Cure.* If the Borrowers, the Administrative Agent and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with their respective Commitments (without giving effect to paragraph (a)(iv) above), whereupon, such Lender will cease to be a Defaulting Lender; *provided*, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) *New Letters of Credit.* So long as any Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, extend, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

### ARTICLE III

#### *Representations and Warranties*

Each of El Paso and, subject to Section 10.18 and Section 10.19, the Trustee represents and warrants to the Administrative Agent, each Issuing Bank and each of the Lenders that as of the Effective Date and thereafter on each date as required by Section 4.01(b):

SECTION 3.01. *Organization; Powers.* (a) El Paso and each of the Material Subsidiaries (i) is duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted, (iii) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure so to qualify would not reasonably be expected to result in a Material Adverse Effect, and (iv) has the corporate power and authority to execute, deliver and perform its obligations under each of the Loan Documents to which it is or will be a party and each other agreement or instrument contemplated hereby to which it is or will be a party and to borrow hereunder.

(b) BONY is a national banking association duly incorporated, validly existing and in good standing under the laws of the United States of America, and in its capacity as Trustee, (i) has all requisite power and authority to own the property and assets held by it as Trustee under the Trust Agreement and to carry on its business as now conducted and as proposed to be conducted under the Trust Agreement and (ii) has all requisite trust power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated hereby to which it is or will be a party and to borrow hereunder

SECTION 3.02. *Authorization.* (a) The execution, delivery and performance by the Trustee, El Paso and each of the Material Subsidiaries (as applicable) of each of the Loan Documents, the Trust Agreement and the Purchase Contract to which it is or will be a party, (b) the Borrowings by it hereunder and the request by it for the issuance of Letters of Credit, and (c) the use by it of the proceeds of the Loans and the Letters of Credit (collectively, the “*Transactions*”), (x) have been duly authorized by all requisite corporate, trust and, if required, stockholder action and (y) will not (i) violate (A) with respect to El Paso and each of the Material Subsidiaries, any provision of law, statute, rule or regulation, or of the articles of incorporation or other constitutive documents or by-laws of El Paso or any of its Material Subsidiaries or of the Trust Agreement, as applicable, (B) with respect to the Trustee, any provision of law, statute, rule or regulation, or of the articles of incorporation or other constitutive documents or by-laws of the Trustee or of the Trust Agreement, as applicable, (C) any order of any Governmental Authority binding on it or any of its property or (D) any provision of any indenture, agreement or other instrument to which it is a party or by which it or any of its property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation

under any such indenture, agreement or other instrument or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by it.

SECTION 3.03. *Enforceability.* Each of the Loan Documents has been duly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with such document's terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

SECTION 3.04. *Governmental Approvals.* Except as set forth on Schedule 3.04, no action, consent or approval of, registration or filing with or any other action by, any Governmental Authority is or will be required in connection with the Transactions, except for (a) such as have been made or obtained, are in full force and effect and are not subject to any appeal or stay and (b) in the case of the Transactions described in Section 3.02(c), such actions, consents, approvals, registrations and filings the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

SECTION 3.05. *Financial Statements.* El Paso has heretofore furnished to the Lenders its consolidated balance sheets and related statements of operations, shareholders' equity and cash flows (a) as of and for the fiscal year ended December 31, 2017, audited by and accompanied by the opinion of KPMG LLP, independent public accountants, and (b) as of and for each of the fiscal quarters and the portion of the fiscal year ended March 31, 2018 and June 30, 2018, certified by a Financial Officer. Such financial statements present fairly the financial condition and results of operations and cash flows of El Paso and its consolidated Subsidiaries as of such dates and for such periods. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of El Paso and its consolidated Subsidiaries as of the dates thereof. Such financial statements were prepared in accordance with GAAP applied on a consistent basis (except as approved by such accountants or officer, as the case may be, and disclosed therein).

SECTION 3.06. *No Material Adverse Change.* There has been no material adverse change in the business, assets, operations or financial condition of El Paso and the Subsidiaries, taken as a whole, since December 31, 2017.

SECTION 3.07. *Subsidiaries.* As of the Effective Date, El Paso has no Material Subsidiaries and, except as set forth on Schedule 3.07, no other Subsidiaries.

SECTION 3.08. *Litigation; Compliance with Laws.* (a) Except as set forth on Schedule 3.08, there are no actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to its knowledge, threatened against or affecting it or, in the case of El Paso, the Subsidiaries or any business, property or rights of any such person (i) that in any manner draws into question the validity or enforceability of this Agreement or any other Loan Document or (ii) that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except as set forth on Schedule 3.08, neither it nor, in the case of El Paso, any of the Subsidiaries or any of their respective material properties or assets, is in violation of,

nor will the continued operation of their material properties and assets as currently conducted violate, any law, rule or regulation, or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violation or default would reasonably be expected to result in a Material Adverse Effect.

SECTION 3.09. *Federal Reserve Regulations.* (a) Neither it nor, in the case of El Paso, any of the Subsidiaries, is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan made to it or any Letter of Credit issued for its benefit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.10. *Investment Company Act.* It is not an "investment company as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.11. *Use of Proceeds.* It will use the proceeds of the Loans and will request the issuance of Letters of Credit only for the purposes specified in Section 5.08.

SECTION 3.12. *Tax Returns.* Each of El Paso and the Subsidiaries has filed or caused to be filed all Federal, state, local and foreign tax returns or materials required to have been filed by it and has paid or caused to be paid all taxes due and payable by it and all assessments received by it, except Taxes that are being contested in good faith by appropriate proceedings and for which El Paso or such Subsidiary, as applicable, shall have set aside on its books adequate reserves in accordance with GAAP.

SECTION 3.13. *No Material Misstatements.* (i) The Annual Report on Form 10-K filed by El Paso with the SEC for the fiscal year ended December 31, 2017, (ii) the Quarterly Report on Form 10-Q filed by El Paso with the SEC for each of the fiscal quarters ended March 31, 2018 and June 30, 2018 and (iii) any Current Reports on Form 8-K filed by El Paso with the SEC prior to the Effective Date, taken as a whole, do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they are made, not materially misleading; *provided* that to the extent any part of such information was based upon or constitutes a forecast or projection, El Paso represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information.

SECTION 3.14. *Employee Benefit Plans.* El Paso and its ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to result in a Material Adverse Effect. Schedule SB to the most recent annual report filed with the United States Internal Revenue Service with respect to each Plan is complete and accurate in all material respects. Since the date of the Schedule SB in effect on the Effective Date, there has been no material adverse change in the funded status of any Plan. None of El Paso or any of its ERISA Affiliates has incurred any liability as a result of a Plan termination

which remains outstanding which would subject El Paso or any of its ERISA Affiliates to a liability in excess of \$7,500,000.

SECTION 3.15. *Environmental Matters.* Except as set forth in Schedule 3.15, with respect to El Paso and the Subsidiaries.

(a) The properties owned or operated by El Paso and the Subsidiaries (the “*Properties*”) do not contain any Hazardous Materials in amounts or concentrations which (i) constitute or constituted a violation of, or (ii) could reasonably be expected to give rise to liability under, Environmental Laws, which violations and liabilities, in the aggregate, would reasonably be expected to result in a Material Adverse Effect;

(b) All Environmental Permits have been obtained and are in effect with respect to the Properties and operations of El Paso and the Subsidiaries, and the Properties and all operations of El Paso and the Subsidiaries are in compliance with all Environmental Laws and all necessary Environmental Permits, except to the extent that such non-compliance or failure to obtain any necessary permits, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

(c) There have been no Releases or threatened Releases at, from, under or proximate to the Properties or otherwise in connection with the operations of El Paso or the Subsidiaries, which Releases or threatened Releases, in the aggregate, would reasonably be expected to result in a Material Adverse Effect;

(d) None of El Paso and the Subsidiaries has received any notice of an Environmental Claim or request for information under any Environmental Law in connection with the Properties or the operations of El Paso or the Subsidiaries or with regard to any person whose liabilities for environmental matters El Paso or any Subsidiary has retained or assumed, in whole or in part, contractually, by operation of law or otherwise, which, in the aggregate, would reasonably be expected to result in a Material Adverse Effect, nor do El Paso or the Subsidiaries have reason to believe that any such notice will be received or is being threatened; and

(e) Hazardous Materials have not been transported from the Properties, nor have Hazardous Materials been generated, treated, stored or disposed of at, on or under any of the Properties in a manner that could reasonably be expected to give rise to liability under any Environmental Law, which in either case would reasonably be expected to result in a Material Adverse Effect, nor have El Paso or the Subsidiaries retained or assumed any liability, contractually, by operation of law or otherwise, with respect to the generation, treatment, storage or disposal of Hazardous Materials, which transportation, generation, treatment, storage or disposal, or retained or assumed liabilities, in the aggregate, would reasonably be expected to result in a Material Adverse Effect;

SECTION 3.16. *Insurance.* El Paso and the Subsidiaries have insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice. All such insurance is in full force and effect.

SECTION 3.17. *Anti-Terrorism Laws, Etc.* (a) Such Borrower's use of the proceeds of the Loans will not violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

(b) None of such Borrower, any of its subsidiaries or, to the knowledge of such Borrower, any director, officer, employee, agent or Affiliate of such Borrower or any of its subsidiaries is a person that is, or is owned 50 percent or more, individually or in the aggregate, directly or indirectly, or controlled by persons that are (collectively, "***Sanctioned Persons***"): (i) the subject or target of any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively, "***Sanctions***"); or (ii) organized, having a principal place of business in or ordinarily resident in a country or territory that is, or whose government is, the subject of comprehensive Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea and Syria ("***Sanctioned Countries***"). Such Borrower, its respective subsidiaries and, to the knowledge of such Borrower, its respective directors, officers, employees and agents, are in compliance with all applicable Sanctions. Such Borrower and its respective subsidiaries have instituted and maintain policies and procedures designed to promote, achieve and ensure compliance with applicable Sanctions. Such Borrower and its respective subsidiaries are in compliance with the USA Patriot Act. For purposes of this paragraph (b), "control", as used with respect to any Borrower or any of its subsidiaries, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Borrower or such subsidiary, whether through the ownership of voting securities or by contract or otherwise. Control shall be presumed where no other person owns a greater interest.

(c) Such Borrower, its subsidiaries and their respective directors, officers and employees and, to the knowledge of such Borrower, the agents of such Borrower and its subsidiaries, are in compliance with (collectively, "***Anti-Corruption Laws***"): (i) the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "***FCPA***"), and any other applicable anti-corruption/bribery law, in each case, in all material respects; and (ii) all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act of 1970, as amended, and the rules and regulations thereunder. The Loan Parties and their respective subsidiaries have instituted and maintain policies and procedures designed to promote, achieve and ensure continued compliance with Anti-Corruption Laws.

SECTION 3.18. *EEA Financial Institutions.* None of the Borrowers or any of their respective subsidiaries is an EEA Financial Institution.

SECTION 3.19. *Beneficial Ownership Certification.* As of the Effective Date, the information included in the Beneficial Ownership Certifications delivered by the Borrowers to the Administrative Agent on or before the Effective Date is true and correct in all respects.

*ARTICLE IV*

*Conditions of Lending*

The obligations of the Lenders to make Loans and of any Issuing Bank to issue Letters of Credit hereunder are subject to the satisfaction of the following conditions:

SECTION 4.01. *All Credit Events.* On the date of each Borrowing and on the date of each issuance, amendment, renewal or extension of a Letter of Credit by any Issuing Bank (each such event being called a “*Credit Event*”):

(a) The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) or, in the case of the issuance, amendment, renewal or extension of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, renewal or extension of such Letter of Credit as required by Section 2.20(b).

(b) Except in the case of a Borrowing that does not increase the aggregate principal amount of Loans outstanding of any Lender, the representations and warranties set forth herein (other than, with respect to any Credit Event after the Effective Date, the representations and warranties set forth in Sections 3.06 and 3.08(a)) and in the other Loan Documents shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date).

(c) At the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing.

Each Credit Event shall be deemed to constitute a representation and warranty by each Borrower, as to itself, on the date of such Credit Event as to the matters specified in paragraphs (b) (except as aforesaid) and (c) of this Section 4.01.

SECTION 4.02. *Effective Date.* On the Effective Date (it being acknowledged and agreed by the parties hereto that this Agreement shall not become effective until the date on which the following conditions have been satisfied):

(a) The Administrative Agent shall have received, on behalf of itself, the Lenders, the Resigning Agent, the Syndication Agent and the Issuing Banks, favorable written opinions of (i) Baker Botts L.L.P., counsel for El Paso, (ii) Bryan Cave Leighton Paisner LLP, counsel for the Trustee, (iii) Perkins Coie LLP, special regulatory counsel for El Paso, and (iv) the General Counsel of El Paso, in each case (A) dated the Effective Date, (B) addressed to the Issuing Banks, the Administrative Agent, the Resigning Agent, the Syndication Agent and the Lenders, (C) covering such customary matters relating to the Loan Documents and the Transactions as the Administrative Agent shall reasonably request and (D) otherwise in form and substance reasonably

satisfactory to the Administrative Agent, and the Borrowers hereby request such counsel to deliver such opinions.

(b) The Administrative Agent shall have received (i) a certificate of the Secretary or Assistant Secretary of El Paso dated the Effective Date and certifying (A) that attached thereto is a true and complete copy of the certificate or articles of incorporation of El Paso filed with the Secretary of State of Texas on or prior to the Effective Date and as in effect on the Effective Date, (B) that attached thereto is a true and complete copy of the by-laws of El Paso as in effect on the Effective Date and at all times since a date prior to the date of the resolutions described in clause (C) below, (C) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of El Paso authorizing the execution, delivery and performance of the Loan Documents to which El Paso is or is to be a party and the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (D) that attached thereto is a true and complete copy of the Trust Agreement, together with any supplemental instructions pursuant thereto required in connection with this Agreement, and that the Trust Agreement has not been modified, rescinded or amended and is in full force and effect, (E) that attached thereto are true and complete copies of all governmental approvals listed on Schedule 3.04, each of which is in full force and effect as of the Effective Date, and (F) as to the incumbency and specimen signature of each officer executing this Agreement or any other document delivered in connection herewith on behalf of El Paso; (ii) a certificate of another officer of El Paso as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (i) above; (iii) a certificate of a Responsible Officer of the Trustee in form and substance satisfactory to the Administrative Agent; and (iv) such other customary closing documents as the Lenders, the Issuing Banks, the Syndication Agent or the Administrative Agent may reasonably request.

(c) The Administrative Agent shall have received good standing certificates with respect to each Borrower (with respect to El Paso, from the Secretary of State of Texas, the Comptroller of Public Accounts of the State of Texas and the Secretary of State of New Mexico, and with respect to BONY, from the Comptroller of the Currency, the Secretary of State of Texas and the Comptroller of Public Accounts of the State of Texas), in each case issued as of a recent date.

(d) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by a Financial Officer of El Paso, certifying that (i) the representations and warranties set forth in this Agreement and in the other Loan Documents that pertain to El Paso are true and correct in all material respects on and as of the Effective Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties were true and correct in all material respects as of such earlier date), and (ii) no Event of Default or Default that pertains to El Paso has occurred and is continuing.

(e) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by a Responsible Officer of the Trustee, certifying that (i) the representations and warranties set forth in this Agreement and in the other Loan Documents that pertain to the Trustee are true and correct in all material respects on and as of the Effective Date with the same effect as though made on and as of such date, except to the extent such

representations and warranties expressly relate to an earlier date (in which case such representations and warranties were true and correct in all material respects as of such earlier date), and (ii) no Event of Default or Default that pertains to the Trustee has occurred and is continuing.

(f) (i) The Administrative Agent shall have received all Fees and other amounts due and payable on or prior to the Effective Date, including, (A) to the extent invoiced, reimbursement or payment of all reasonable and documented fees and out-of-pocket disbursements of counsel to the Administrative Agent and other out-of-pocket fees and expenses required to be reimbursed or paid by the Borrowers hereunder or under any other Loan Document and (B) all fees payable by El Paso pursuant to the Fee Letter; and (ii) the Joint Lead Arrangers (other than MUFG) shall have received all fees payable by El Paso pursuant to that certain fee letter agreement, dated the Effective Date, among such Joint Lead Arrangers and El Paso.

(g) All requisite Governmental Authorities shall have approved or consented to the Transactions to the extent required (and such approvals shall be in full force and effect) and there shall be no action, actual or threatened, before any Governmental Authority or arbitrator that (a) has a reasonable likelihood of restraining, preventing or imposing burdensome conditions on the Transactions or (b) would reasonably be expected to result in a Material Adverse Effect.

(h) The Administrative Agent shall have received each of the following documents, each of which shall be originals, portable document format ("pdf") or facsimiles (followed promptly by originals), duly executed and delivered by each party thereto: (i) this Agreement; (ii) a fee letter agreement, dated the Effective Date, with each Issuing Bank as of the Effective Date (other than MUFG), which fee letter agreement shall set forth the fronting fees payable by the Borrowers with respect to each Letter of Credit issued by such Issuing Bank; (iii) one or more Notes, to the extent requested by any Lenders; and (iv) an amendment to the Purchase Contract to amend the definitions of "Credit Agreement" and "Credit Bank" therein to refer to this Agreement and MUFG (in its capacity as Administrative Agent), respectively, and otherwise in form and substance satisfactory to the Administrative Agent.

(i) At least five (5) days prior to the Effective Date, in respect of any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to such Borrower.

(j) The Lenders shall have received, to the extent requested, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(k) The Resigning Agent shall have received, for the account of the Resigning Agent, the Existing Lenders and the Issuing Bank (as defined in the Existing Credit Agreement), as applicable, all interest, Fees (as defined in the Existing Credit Agreement), costs and expenses payable by the Borrowers under the Existing Credit Agreement that are unpaid and accrued through and including the Effective Date, including, to the extent invoiced, reimbursement or payment of all reasonable and documented fees and out-of-pocket disbursements of counsel to the Resigning Agent and other out-of-pocket fees and expenses required to be reimbursed or paid by the Borrowers under the Existing Credit Agreement.

*ARTICLE V*

*Affirmative Covenants*

Each of El Paso and, subject to Section 10.18 and Section 10.19, the Trustee covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full (or sufficient Cash Collateral has been deposited with the Administrative Agent in an amount equal to the then outstanding L/C Exposure), unless the Required Lenders shall otherwise consent in writing, each of the Borrowers will, and El Paso will cause each of the Material Subsidiaries to:

SECTION 5.01. *Existence; Businesses and Properties.* (a) Except as otherwise permitted by Section 6.05, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits (including Environmental Permits), franchises and authorizations material to the conduct of its business; comply in all material respects with all applicable laws, rules, regulations and decrees and orders of any Governmental Authority (including, without limitation, ERISA and Environmental Laws and Environmental Permits), whether now in effect or hereafter enacted; conduct any Remedial Action in substantial compliance with Environmental Laws; and at all times maintain and preserve all property material to the conduct of such business and keep such property in good repair, working order and condition, ordinary wear and tear excepted; except in each case where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

(c) Maintain in effect and enforce policies and procedures designed to promote and ensure compliance by such Borrower, its respective subsidiaries and their respective directors, officers, employees, agents and representatives with applicable Sanctions, the FCPA and any other applicable Anti-Corruption Laws.

(d) Provide such information and take such actions as are reasonably requested by the Administrative Agent, any Issuing Bank or any Lender in order to assist the Administrative Agent, such Issuing Bank and such Lender in maintaining compliance with the USA Patriot Act.

SECTION 5.02. *Insurance.* With respect to El Paso, keep its insurable properties, the insurable properties of the Material Subsidiaries and the insurable properties of the Trustee adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks, including nuclear hazard, fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations; and maintain such other insurance as may be required by law.

SECTION 5.03. *Obligations and Taxes.* Pay and discharge promptly when due (a) its Indebtedness and other obligations in accordance with their terms, to the extent that the failure to pay and discharge such amounts, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (b) all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, materials and supplies or otherwise that, if unpaid, might give rise to a Lien upon such properties or any part thereof; *provided, however*, that such payment and discharge shall not be required with respect to any such Indebtedness, obligation, tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the applicable Borrower shall have set aside on its books adequate reserves with respect thereto in accordance with GAAP and such contest operates to suspend collection of the contested Indebtedness, obligation, tax, assessment or charge and enforcement of a Lien.

SECTION 5.04. *Financial Statements, Reports, etc.* Furnish to the Administrative Agent (and the Administrative Agent shall promptly after receipt thereof make available to each Lender):

(a) with respect to El Paso, within 120 days after the end of each fiscal year, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows showing its financial condition as of the close of such fiscal year and the results of its operations during such year, all audited by KPMG LLP or other independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which shall not be qualified in any material respect) to the effect that such consolidated financial statements fairly present its financial condition and results of operations in accordance with GAAP consistently applied;

(b) with respect to El Paso, within 60 days after the end of each of the first three fiscal quarters of each fiscal year, its consolidated balance sheet and related statements of operations, stockholders' equity, and cash flows showing its financial condition as of the close of such fiscal quarter and the results of its operations during such fiscal quarter and the then elapsed portion of the fiscal year, all certified by one of its Financial Officers, as fairly presenting its financial condition and results of operations on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments;

(c) with respect to El Paso, concurrently with any delivery of financial statements under sub-paragraph (a) or (b) above, a certificate of a Financial Officer certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(d) with respect to El Paso, promptly after the same become publicly available, copies of all periodic and other reports and definitive proxy statements (other than any registration statement on Form S-8 or its equivalent) filed by it or any Subsidiary with the SEC, or distributed to its shareholders generally;

(e) with respect to the Trustee, concurrently with the delivery thereof to El Paso, copies of its periodic trust reports;

(f) with respect to El Paso, promptly after El Paso shall have received notice thereof, notice of any change in the debt rating of the Index Debt, or any notice that El Paso or any Index Debt shall be placed on "CreditWatch" or "WatchList" or any similar list maintained by either Rating Agency, in each case with negative implications;

(g) promptly after the request by any Lender or the Administrative Agent, all documentation and other information that such Lender or the Administrative Agent reasonably requests for purposes of compliance with applicable "know your customer" requirements under the USA Patriot Act or other applicable anti-money laundering and anti-terrorism laws, rules and regulations;

(h) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of such Borrower or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request; and

(i) promptly after a Responsible Officer of any Borrower becomes aware of any change in the information provided in a Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification, a written notice specifying any such change.

Documents required to be delivered pursuant to this Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR); or (ii) on which such documents are posted on the Borrowers' behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (A) upon written request by the Administrative Agent or any Lender, the Borrowers shall deliver paper copies of such documents to the Administrative Agent or such Lender upon its request to the Borrowers to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Borrowers shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such document to it and maintaining its copies of such documents.

SECTION 5.05. *Litigation and Other Notices.* Furnish to the Administrative Agent written notice of the following promptly after any Responsible Officer of such Borrower obtains actual knowledge thereof:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto; and

(b) the filing or commencement of any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority, against it or, in the case of El Paso, any Material Subsidiary that would reasonably be expected to result in a Material Adverse Effect;

SECTION 5.06. *Employee Benefits.* With respect to El Paso, furnish to the Administrative Agent as soon as possible, and in any event within 10 days, after any Responsible Officer of El Paso or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred that, alone or together with any other ERISA Event, would reasonably be expected to result in liability of El Paso in an aggregate amount exceeding \$10,000,000 or requiring payments exceeding \$4,000,000 in any year, a statement of a Financial Officer of El Paso setting forth details as to such ERISA Event and the action, if any, that El Paso proposes to take with respect thereto.

SECTION 5.07. *Maintaining Records; Access to Properties and Inspections.*

(a) With respect to El Paso, keep adequate records and books of account, in which full and correct entries shall be made of all of its financial transactions and its assets and business so as to permit El Paso and its Subsidiaries to present financial statements in accordance with GAAP.

(b) Permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the properties of such Borrower or such Material Subsidiary upon reasonable notice and at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances and condition of such Borrower or such Material Subsidiary with the officers thereof and independent accountants therefor (subject to reasonable requirements of confidentiality, including requirements imposed by law or by contract); *provided* that (i) other than with respect to such visits and inspections during the continuation of a Default or an Event of Default, (x) only the Administrative Agent on behalf of the Lenders may exercise rights under this Section and (y) only one such visit and inspection shall be permitted during any calendar year and (ii) the costs and expenses incurred by any such Lender in connection with any such visitation, inspection, extracts, copies or discussions shall be, upon the occurrence and during the continuation of a Default or an Event of Default, for the account of El Paso, and, in all other circumstances, for the account of such Lender. It is understood and agreed that the costs and expenses incurred by the Administrative Agent in connection with any such visitation, inspection, extracts, copies or discussions shall be for the account of El Paso.

SECTION 5.08. *Use of Proceeds.* (a) Use the proceeds of the Loans made to it on and after the Effective Date (i) in the case of El Paso, solely (A) to provide working capital to El Paso, (B) for general corporate purposes and (C) to pay related fees and expenses, and (ii) in the case of the Trustee, solely (A) to finance the purchase of Nuclear Fuel by the Trustee in accordance with the Trust Agreement and the Purchase Contract, (B) to pay interest on and accrued fees with respect to the Trust Senior Unsecured Notes, (C) to pay interest and other amounts payable hereunder by the Trustee as needed and (D) to pay related fees and expenses; and (b) request the issuance of Letters of Credit (i) in the case of Letters of Credit issued for the account of El Paso, solely for general corporate purposes, and (ii) in the case of Letters of Credit issued for

the account of the Trustee, solely to support obligations incurred by the Trustee in respect of the purchase of Nuclear Fuel in accordance with the Trust Agreement and the Purchase Contract.

SECTION 5.09. *Subsidiary Guarantors.* El Paso shall promptly (and in any event within thirty (30) days (or such longer period not to exceed sixty (60) days as the Administrative Agent may agree in its reasonable discretion) after the creation, acquisition or existence of any Material Subsidiary) cause each Material Subsidiary to execute a guarantee of all the El Paso Obligations pursuant to a Subsidiary Guarantee Agreement. In furtherance of the foregoing, El Paso shall give prompt notice to the Administrative Agent of the creation, acquisition or existence of any such Material Subsidiary.

SECTION 5.10. *Maintenance of Ratings.* With respect to El Paso, use commercially reasonable efforts to cause at all times Applicable Ratings to be in effect.

## ARTICLE VI

### *Negative Covenants*

Each of El Paso and, subject to Section 10.18 and Section 10.19, the Trustee covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full (or sufficient Cash Collateral has been deposited with the Administrative Agent in an amount equal to the then outstanding L/C Exposure), unless the Required Lenders shall otherwise consent in writing:

SECTION 6.01. *Subsidiary Indebtedness.* El Paso will not permit any Subsidiary that is not a Subsidiary Guarantor to incur, create, assume or permit to exist (collectively, “*incur*”) any Indebtedness, except:

(a) Indebtedness of any such Subsidiary owed to El Paso or any other Subsidiary;

(b) Indebtedness of any Receivables Subsidiary incurred pursuant to the Receivables Facility Documents in an aggregate principal amount not in excess of \$100,000,000 outstanding at any time; and

(c) Indebtedness of Subsidiaries not otherwise permitted by the foregoing paragraphs of this Section 6.01; *provided* that the aggregate principal amount of all Indebtedness of all such Subsidiaries outstanding under this paragraph (c) and Indebtedness secured by Liens permitted by Section 6.02(s) shall not exceed 20% of Total Consolidated Capital.

SECTION 6.02. *Liens.* Neither Borrower will, nor will El Paso permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person, including any Subsidiary) now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except:

(a) Liens on property or assets of El Paso existing on the date hereof and set forth in Schedule 6.02; *provided* that such Liens shall secure only those obligations which they secure on the date hereof;

(b) Liens to secure the Obligations;

(c) any Lien existing on any Operating Property prior to the acquisition thereof by El Paso or any Subsidiary to secure Indebtedness assumed by El Paso or any Subsidiary in connection with such acquisition; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition and (ii) such Lien does not apply to any other property or assets of either Borrower or any Subsidiary (other than related contracts, proceeds of such Operating Property, accessions thereto and replacements thereof, to the extent the documentation creating such Lien includes such additional property);

(d) Liens for taxes or assessments by any Governmental Authority not yet due or which are being contested in compliance with Section 5.03;

(e) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords', licensors' or other like Liens arising in the ordinary course of business and securing obligations that are not due and payable or which are being contested in compliance with Section 5.03;

(f) pledges and deposits made in the ordinary course of El Paso's or any Subsidiary's business in compliance with workmen's compensation, unemployment insurance and other social security laws or regulations;

(g) deposits by El Paso or any Subsidiary to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) zoning restrictions, easements, rights-of-way, restrictions on use of real property or permit or license requirements and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the businesses of the Borrowers or any Subsidiary;

(i) Liens to secure Indebtedness incurred by El Paso or any Subsidiary in connection with the acquisition or lease by El Paso or any Subsidiary in the ordinary course of business, after the date hereof, of furniture, fixtures, equipment and other assets not owned by El Paso or any Subsidiary on the date hereof; *provided* that (i) such Indebtedness shall not be secured by any Operating Property of El Paso or any Subsidiary other than the Operating Property with respect to which such Indebtedness is incurred and (ii) the Lien securing such Indebtedness shall be created within 180 days of the incurrence of such Indebtedness;

(j) Liens of a Mortgage Indenture to secure First Mortgage Bonds in an aggregate principal amount not to exceed \$700,000,000 issued in exchange for or to secure or to

repurchase, repay or otherwise refinance the Indebtedness of El Paso under the Senior Unsecured Notes;

(k) Liens to secure Indebtedness of any person existing at the time such person is merged into or consolidated with, or such person disposes of all or substantially all its properties (or those of a division) to, El Paso or any Subsidiary;

(l) Liens to secure Indebtedness incurred by El Paso or any Subsidiary to acquire, construct, develop or substantially repair, alter or improve Operating Property or to provide funds for any such purpose or for reimbursement of funds previously expended for any such purpose; *provided* that such Indebtedness is incurred contemporaneously with, or within 730 days after, such acquisition or the completion of construction, development or substantial repair, alteration or improvement;

(m) Liens to secure, directly or indirectly, El Paso's or any Subsidiary's obligations with respect to Indebtedness issued by any Governmental Authority, including Indebtedness represented by securities issued by any such Governmental Authority (or providers of credit enhancement with respect to such securities), including, without limitation, El Paso's or any Subsidiary's obligations with respect to industrial development, pollution control or similar revenue bonds incurred for the purpose of financing all or any part of the purchase price or the cost of substantially repairing or altering, constructing, developing or substantially improving Operating Property;

(n) Liens on the property of any Receivables Subsidiary incurred pursuant to the Receivables Facility Documents and Liens in favor of any Receivables Subsidiary granted by El Paso or any other Subsidiary with respect to Receivables purportedly sold to any Receivables Subsidiary by El Paso or such other Subsidiary pursuant to a Receivables Facility;

(o) Liens created by a Mortgage Indenture and securing the payment of the fees and expenses of the trustee in respect of such Mortgage Indenture;

(p) one or more attachments or other similar Liens on assets of El Paso or any Subsidiary arising in connection with court proceedings (i) in an aggregate principal amount not in excess of \$40,000,000 (so long as El Paso or such Subsidiary has set aside adequate reserves therefor) or (ii) the execution of which has been stayed or which has been appealed and secured, if necessary, by an appeal bond; *provided* that in each case no Event of Default shall result therefrom;

(q) any Lien arising by operation of law on the assets of El Paso or any Subsidiary in favor of any Governmental Authority with respect to any franchise, grant, license, permit or contract;

(r) Liens to secure any extension, renewal or replacement (or successive extensions, renewals or replacement), in whole or in part, of an instrument or agreement creating any Indebtedness referred to in clause (c), (i), (k) or (l) above that is otherwise expressly permitted hereunder (such Indebtedness, "*Refinancing Indebtedness*"); *provided*, that (i) the principal amount of such Refinancing Indebtedness does not exceed the principal amount of the Indebtedness being extended, renewed or replaced, except by an amount equal to unpaid accrued

interest and premiums (including tender premiums) thereon plus underwriting discounts and other reasonable and customary fees, commissions and expenses (including upfront fees, original issue discount or initial yield payments) incurred in connection with the relevant extension, renewal or replacement, (ii) such Refinancing Indebtedness shall have (A) a final maturity on or later than the final maturity date of the Indebtedness being extended, renewed or replaced and (B) a weighted average life to maturity equal to or greater than the weighted average life to maturity of the Indebtedness being extended, renewed or replaced, (iii) any such Refinancing Indebtedness is incurred only by the obligor or obligors in respect of the Indebtedness being extended, renewed or replaced and shall not have any greater guarantees or security than the Indebtedness being extended, renewed or replaced, (iv) if the Indebtedness being extended, renewed or replaced was originally contractually subordinated to the Obligations in right of payment, such Refinancing Indebtedness is contractually subordinated to the Obligations in right of payment on terms not less favorable in any material respect, taken as a whole, to the Lenders than those applicable to the Indebtedness being extended, renewed or replaced, taken as a whole, and (v) as of the date of the incurrence of such Refinancing Indebtedness and after giving pro forma effect thereto, no Default or Event of Default shall have occurred and be continuing; and

(s) Liens that are not otherwise permitted by any of the foregoing paragraphs of this Section 6.02; *provided* that, at the time that any such Lien is granted (and after giving effect thereto), the aggregate outstanding principal amount of all Indebtedness outstanding under Section 6.01(c) and Indebtedness secured by Liens permitted by this Section 6.02(s) shall not exceed 20% of Total Consolidated Capital;

*provided*, that, notwithstanding the foregoing, the Borrowers will not, and El Paso will not permit any of its Subsidiaries to, secure any Indebtedness outstanding pursuant to Section 6.02(s) under any Material Credit Facility unless and until the Obligations (and any guarantee delivered in connection therewith) shall concurrently be secured equally and ratably with such Indebtedness pursuant to documentation reasonably acceptable to the Required Lenders in substance and in form, including an intercreditor agreement and opinions of counsel to the Borrowers from counsel that is reasonably acceptable to the Administrative Agent.

SECTION 6.03. *Sale and Lease-Back Transactions.* Neither Borrower will, nor will El Paso permit any Material Subsidiary to, enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "***Sale Lease-Back Transaction***"), except for (i) any Sale Lease-Back Transaction that constitutes a Capital Lease Obligation otherwise permitted to be incurred under this Agreement, and (ii) Sale Lease-Back Transactions of real property and tangible personal property with an aggregate fair market value not to exceed \$50,000,000 at any time.

SECTION 6.04. *Investments, Loans and Advances.* El Paso will not, and will not permit any Material Subsidiary to, purchase, hold or acquire any capital stock, evidences of indebtedness or other securities of, make or permit to exist any loans or advances to, or make or permit to exist any investment or any other interest in, any other person in excess of \$5,000,000 at any time outstanding (without giving effect to any write-offs or write-downs thereof), except:

(a) investments by El Paso or any Material Subsidiary in the capital stock of a Subsidiary; *provided however*, that the aggregate cumulative amount of El Paso's and the Material Subsidiaries' investments in, and loans and advances to, such Subsidiaries that are not Loan Parties shall not exceed \$20,000,000;

(b) Permitted Investments;

(c) Investments of El Paso existing on the Effective Date and set forth on Schedule 6.04;

(d) Investments received in connection with the bankruptcy or reorganization of customers and suppliers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(e) Investments in intercompany loans between and among El Paso and any Subsidiary Guarantor;

(f) Investments made in connection with and to facilitate the Receivables Facilities; and

(g) Guarantees by El Paso of Indebtedness of Rio Grande Resources Trust II, to the extent such Guarantees are permitted to be incurred by El Paso pursuant to Section 6.09.

SECTION 6.05. *Mergers, Consolidations, Sales of Assets and Acquisitions.* Neither Borrower will, nor will El Paso permit any Material Subsidiary to, merge into or consolidate with any other person, or permit any other person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any substantial part of its assets (whether now owned or hereafter acquired) or any capital stock of any Material Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other person except that (a) the Trustee may purchase and sell Nuclear Fuel in accordance with the provisions of the Purchase Contract, (b) El Paso and any Material Subsidiary may sell Receivables pursuant to a Receivables Facility, (c) El Paso may sell or contribute transmission assets to the extent that FERC orders such assets to be sold in connection with joining a Regional Transmission Organization, (d) either Borrower or any Material Subsidiary may merge with another person if (x) such Borrower or such Material Subsidiary, as the case may be, is the surviving corporation (subject to clause (e) below) and (y) no Default shall have occurred and be continuing after giving effect to such merger, (e) any Material Subsidiary may merge with El Paso if El Paso is the surviving corporation, and (f) the Trustee may merge into or consolidate with, or transfer all of the assets of the corporate trust business of the Trustee to, another person, subject to the terms of Sections 8.2 and 8.3 of the Trust Agreement, *provided*, that the successor Trustee shall promptly deliver, or cause to be delivered, to the Administrative Agent true and complete copies of all instruments and other agreements executed and delivered by the predecessor Trustee and/or the successor trustee pursuant to Section 8.3 of the Trust Agreement in connection therewith.

SECTION 6.06. *Transactions with Affiliates.* Neither Borrower will, nor will El Paso permit any Subsidiary to, sell or transfer any property or assets to, or purchase or acquire

any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates (other than El Paso's Wholly Owned Subsidiaries), except that (a) El Paso or any Subsidiary may engage in any of the foregoing transactions in the ordinary course of business at prices and on terms and conditions not materially less favorable to El Paso or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties or if no comparable transaction with an unrelated third party exists or could exist, on a basis that is fair to El Paso or such Subsidiary from a financial point of view, (b) El Paso and any Subsidiary may sell Receivables pursuant to a Receivables Facility and (c) the Trustee may engage in any transactions with its Affiliates expressly permitted under the Trust Agreement.

SECTION 6.07. *Businesses of Borrowers and Material Subsidiaries.* Neither Borrower will, nor will El Paso permit any Material Subsidiary to, engage at any time in any business or business activity other than (a) with respect to El Paso and the Material Subsidiaries, the business conducted by them on the Effective Date and business activities reasonably incidental thereto, and (b) with respect to the Trustee, purchasing, holding title to, making payments with respect to and selling Nuclear Fuel pursuant to, and on the terms set forth in, the Trust Agreement and the Purchase Contract.

SECTION 6.08. *Other Agreements.* Neither Borrower will, nor will El Paso permit any Subsidiary to, permit any waiver, supplement, modification, amendment, termination or release of (i) the Trust Agreement or the Purchase Contract or (ii) the Receivables Facility Documents, in each case to the extent that it is a party thereto and any such waiver, supplement, modification, amendment, termination or release would be adverse to the Lenders in any material respect.

SECTION 6.09. *Debt to Capitalization Ratio.* El Paso will not permit the ratio of (i) Total Consolidated Debt to (ii) Total Consolidated Capital as of the last day of any fiscal quarter to be in excess of 0.65 to 1.00.

SECTION 6.10. *Fiscal Year.* El Paso will not, and will not permit any Subsidiary to, change the end of its fiscal year from December 31 to any other date.

SECTION 6.11. *Use of Proceeds.* Neither Borrower will, directly or, to the respective Borrower's knowledge, indirectly, use the proceeds of the Loans or Letters of Credit, or lend, contribute or otherwise make available such proceeds to any of its Affiliates, any joint venture partner or any other person, (a) to fund any activities or business of or with any Sanctioned Person or Sanctioned Country, (b) in any other manner that would result in a violation of Sanctions by any person (including any person participating in the Loans or Letters of Credit, whether as Administrative Agent, Issuing Bank, Lender, Joint Lead Arranger, underwriter, advisor, investor, or otherwise) or (c) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of the FCPA or any other applicable Anti-Corruption Law.

*ARTICLE VII*

*Events of Default*

SECTION 7.01. *Events of Default.* In case of the happening of any of the following events ("*Events of Default*"):

(a) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished; or

(b) default shall be made in the payment of any principal of any Loan or, subject to Section 2.20(e), the reimbursement with respect to any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise; or

(c) default shall be made in the payment of any interest on any Loan or any Fee or L/C Disbursement or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days; or

(d) default in any material manner shall be made in the due observance or performance by either Borrower or any Subsidiary of any covenant, condition or agreement contained in Section 5.01(a) or 5.05 or in Article VI; or

(e) default shall be made in the due observance or performance by either Borrower or any Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in (b), (c) or (d) above) and such default shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent or any Lender to the Borrowers; or

(f) either Borrower or any Subsidiary shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness in a principal amount in excess of \$50,000,000, when and as the same shall become due and payable, or (ii) default (after the expiration of any applicable grace period) in the observance or performance of any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity; or

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of either Borrower or any Material Subsidiary or of a substantial part of the property or assets of either Borrower or any such Material Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar

law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for either Borrower or any Material Subsidiary or for a substantial part of the property or assets of either Borrower or any such Material Subsidiary or (iii) the winding-up or liquidation of either Borrower or any Material Subsidiary; and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(h) either Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in (g) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for either Borrower or any such Material Subsidiary or for a substantial part of the property or assets of either Borrower or any such Material Subsidiary, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take any action for the purpose of effecting any of the foregoing; or

(i) a final judgment or judgments for the payment of money in an aggregate amount in excess of \$50,000,000 shall be rendered against either Borrower or any Material Subsidiary and the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed, bonded or discharged pending appeal, or are not discharged within 45 days after expiration of such stay, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of either Borrower or any Subsidiary to enforce any such judgment; or

(j) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, has resulted or could reasonably be expected to result in a Material Adverse Effect; or

(k) there shall have occurred a Change in Control; or

(l) a Purchase Contract Default shall have occurred and be continuing;

then, and in every such event (other than an event with respect to either Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrowers, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of each Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by each Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event with respect to

either Borrower described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of each Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by each Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

## *ARTICLE VIII*

### *The Administrative Agent*

SECTION 8.01. *Appointment and Authority.* Each of the Lenders and the Issuing Banks hereby irrevocably appoints MUFG to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and none of the Borrowers shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

SECTION 8.02. *Rights as a Lender.* The person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the person serving as the Administrative Agent hereunder in its individual capacity. Such person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, any Borrower or any Subsidiary or other Affiliate thereof as if such person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 8.03. *Exculpatory Provisions.* (a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;
- (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated

hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided*, that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

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

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Article VII or Section 10.08), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent in writing by a Borrower, a Lender or an Issuing Bank.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence or continuance of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) Each Lender agrees (i) to reimburse the Administrative Agent, on demand, in the amount of its Applicable Percentage of any expenses incurred for the benefit of the Lenders by the Administrative Agent, including counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, that shall not have been reimbursed by the Borrowers and (ii) to indemnify and hold harmless the Administrative Agent and any of its Related Parties, on demand, in the amount of such pro rata share, from and against any and all liabilities, taxes, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against it in its capacity as Administrative Agent or any of them in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by it or any of

them under this Agreement or any other Loan Document, to the extent the same shall not have been reimbursed by the Borrowers, *provided* that no Lender shall be liable to the Administrative Agent or any such other indemnified person for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are determined by the final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Administrative Agent or any of its Related Parties.

SECTION 8.04. *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, increase, reinstatement or renewal of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or the issuance, extension, increase, reinstatement or renewal of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for any Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. *Delegation of Duties.* The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Commitments as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 8.06. *Resignation of Administrative Agent.* (a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Banks and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to), on

behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrowers and such person remove such person as Administrative Agent and, in consultation with the Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and Issuing Bank directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by any Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between El Paso and such successor. After the retiring or removed Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.05 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

SECTION 8.07. *Non-Reliance on Agents and Other Lenders.* Each Lender and Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 8.08. *No Other Duties.* Anything herein to the contrary notwithstanding, none of the Joint Lead Arrangers, the Syndication Agent, the Co-Documentation Agents nor the Joint Bookrunners listed on the cover page hereof shall have any powers, duties or

responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

SECTION 8.09. *Administrative Agent May File Proofs of Claim.* In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or any other Obligations shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, the Letters of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Section 10.05) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 10.05.

SECTION 8.10. *Resignation of JPMorgan as Administrative Agent.*  
(a) JPMorgan hereby resigns as Administrative Agent (as defined in the Existing Credit Agreement) under the Existing Credit Agreement as of the Effective Date; *provided*, that the provisions of Article VIII and Section 10.05 of this Agreement shall inure to the benefit of JPMorgan as to any actions taken or omitted to be taken by JPMorgan while JPMorgan was Administrative Agent (as defined in the Existing Credit Agreement) under the relevant Loan Documents, including, without limitation, all actions taken or to be taken in furtherance of the transfer of agency to MUFG as successor Administrative Agent (in such capacity, the “**Successor Administrative Agent**”), regardless of whether such action is taken before or after the effectiveness thereof.

(b) The parties to this Agreement hereby accept such resignation and waive any prior notice or action otherwise required under the Existing Credit Agreement or any other Loan Document in connection with such resignation.