SCHOTTENSTEIN JAY L
Form SC 13D/A
September 21, 2011

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

Amendment No. 11

AMERICAN EAGLE OUTFITTERS, INC.

(Name of Issuer)

Common Stock

(Title of Class of Securities)

02553E 10 6

(CUSIP Number)

Irwin A. Bain, Esq.

Schottenstein Stores Corporation

4300 E. Fifth Avenue

Columbus, Ohio 43219

614-449-4332

With a copy to:

Robert J. Tannous, Esq.

Porter, Wright, Morris & Arthur LLP

41 South High Street

Columbus, OH 43215

614-227-1953

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

September 16, 2011

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), (f) or (g), check the following box ¨

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1. Names of Reporting Person:

Jay L. Schottenstein

S.S. or I.R.S. Identification No. of Above Individual (optional):

N/A

2. Check the Appropriate Box if a Member of a Group:

(a) x

(b) ¨

3. SEC Use Only

4. Source of Funds:

00

5. Check Box if Disclosure of legal Proceedings is Required Pursuant to Items 2(d) or 2(e): ¨

6. Citizenship or Place of Organization:

United States

Number of Shares Beneficially Owned by Each Reporting Person With:	7. Sole Voting Power:	4,621,951
	8. Shared Voting Power:	4,530,664
	9. Sole Dispositive Power:	

927,215

10. Shared Dispositive Power:

4,530,664

11. Aggregate Amount Beneficially Owned by Each Reporting Person:

9,152,615

12. Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares: ¨

13. Percent of Class Represented by Amount in Row (11):

4.7%

14. Type of Reporting Person:

IN

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ITEM 1. Security and Issuer

(a) Title of Class of Securities: Common Stock, $0.01 par value
(b) Name of Issuer: American Eagle Outfitters, Inc.
(c) Address of Issuer s Principal Executive Offices:
77 Hot Metal Street
Pittsburgh, Pennsylvania 15203

ITEM 2. Identity and Background

(a) (1) Jay L. Schottenstein
(2) SEI, Inc.
(3) Geraldine Schottenstein Hoffman

(b) (1) 4300 East Fifth Ave., Columbus, Ohio 43219
(2) 4300 East Fifth Ave., Columbus, Ohio 43219
(3) 4300 East Fifth Ave., Columbus, Ohio 43219

(c) (1) Chairman of the Board
(2) Set forth on Schedule A annexed hereto is the name, principal business and address of each of the directors and executive officers of SEI, Inc. as of the date hereof.
(3) N/A

(d) Criminal convictions: Not applicable

(e) Civil proceedings: Not applicable

(f) Citizenship:

Jay L. Schottenstein is a United States Citizen

SEI, Inc. is a Nevada corporation

Geraldine Schottenstein Hoffman is a United States Citizen

ITEM 3. Source and Amount of Funds or Other Consideration

Not applicable.

ITEM 4. Purpose of Transaction

SEI, Inc. ("SEI") is a Nevada corporation, of which Jay L. Schottenstein is a director, Chairman of the Board, Chief Executive Officer and President, and of which 79.61% of the issued and outstanding common stock is currently owned by trusts of which Mr. Schottenstein is Trustee. On September 16, 2011, SEI redeemed shares of its common stock from certain of its shareholders and in exchange distributed 3,694,736 shares of Common Stock (the "Distributed SEI Shares"). The transaction discussed in this paragraph is referred to herein as the "SEI Redemption".

On September 16, 2011, Mr. Schottenstein entered into a Voting and Stockholder Agreement (the "Voting Agreement") with Ann S. Deshe, Susan S. Diamond, certain of their spouses, lineal descendants, and affiliates (collectively, the "Deshe/Diamond Affiliates"), and the other parties named therein, which Voting Agreement is attached hereto as Exhibit 1. Under the Voting Agreement, Mr. Schottenstein was granted an irrevocable proxy to vote the Distributed SEI Shares that are held by the Deshe/Diamond Affiliates.

As a result of the Voting Agreement and SEI Redemption, Mr. Schottenstein now has sole voting power over the Distributed SEI Shares; however, Mr. Schottenstein no longer has any dispositive power over the Distributed SEI Shares.

The reporting persons evaluate each of their investments, including the Company and the Shares, on an ongoing basis, based upon various factors, criteria and alternatives including those noted below. Based on current circumstances and such ongoing evaluation the reporting persons may, from time to time, acquire additional Shares, continue to own Shares or dispose of Shares at any time, in the open market or otherwise, may take actions which could involve any of the items enumerated in the Schedule 13D instructions to this Item 4. The reporting persons reserve the

right, based on all relevant factors and circumstances, to change their investment intent with respect to the Company and the Shares at any time in the future, and to change their intent with respect to any or all of the matters referred to in this Schedule 13D, including any of the items enumerated in the Schedule 13D instructions to this Item 4. In reaching any conclusion as to its future course of action, the reporting persons will take into consideration various factors, criteria and alternatives, including, but not limited to, the Company's business and prospects, other developments concerning the business and management of the Company, its competitors and the industry in which it operates, other business and investment opportunities available to the reporting persons, any contractual obligations to which the reporting persons are now or may in the future become subject, including in respect of the financing of their ownership of the Shares or otherwise relating to its investment in the Company or otherwise, and general economic and stock market conditions, including, but not limited to, the market price of the Shares and other investment alternatives. From time to time the reporting persons may enter into discussions with the Company and/or third parties, concerning their holding of the Shares and possible future extraordinary transactions involving the reporting persons and the Company and such third persons. There can be no assurance as to whether the reporting persons will take any action with respect to their ownership of the Shares, take action with respect to any of the items enumerated in the Schedule 13D instructions to this Item 4, including entering into any discussions with the Company or with any third parties with respect to the Shares or the Company, nor as to outcome of any such matters, including as to whether any discussions if entered into will lead to any transaction that might be considered or agreed to by any third party, the Company or the reporting persons, the terms of any transaction, or the timing or certainty of any transaction.

ITEM 5. Interest in Securities of the Issuer

(1) Jay L. Schottenstein

(a) Amount Beneficially Owned: 9,152,615 shares; Percent of Class: 4.7%. Includes 688,653 shares held by Mr. Schottenstein directly; 4,285,258 shares held by SEI, Inc., 79.61% of whose common stock is owned by trusts of which Mr. Schottenstein is Trustee; Mr. Schottenstein is also the Chairman of the Board, Chief Executive Officer and President of SEI, Inc.; 232,262 shares deemed held by Mr. Schottenstein that are subject to options exercisable within 60 days; 251,706 shares held in trusts for the benefit of family members as to which Mr. Schottenstein is either Trustee or Trust Advisor and 3,694,736 shares as to which Mr. Schottenstein has sole voting power as described in Item 4.

(b) Number of Shares as to which such person has:

(i) Sole power to vote or to direct the vote: 4,621,951 shares
(ii) Shared power to vote or to direct the vote: 4,530,664 shares
(iii) Sole power to dispose or to direct the disposition of: 927,215 shares
(iv) Shared power to dispose or to direct the disposition of: 4,530,664 shares

(c) Transactions effected by Mr. Schottenstein during the past 60 days:

As a result of the SEI Redemption described in Item 4 herein, on September 16, 2011, Mr. Schottenstein no longer has any dispositive power over 3,694,736 shares of Common Stock held by SEI, but pursuant to the Voting Agreement has sole voting power to vote such shares of Common Stock.

(d) Another s right to receive dividends: Not applicable

(e) Date ceased to be a 5% owner: August 27, 2009

(2) SEI, Inc.

(a) Amount Beneficially Owned: 4,285,258 shares; Percent of Class: 2.2%

(b) Number of Shares as to which such person has:

(i) Sole power to vote or to direct the vote: 4,285,258 shares
(ii) Shared power to vote or to direct the vote: 0 shares
(iii) Sole power to dispose or to direct the disposition of: 4,285,258 shares
(iv) Shared power to dispose or to direct the disposition of: 0 shares

(c) Transactions effected by SEI, Inc. during the past 60 days:

As a result of the SEI Redemption described in Item 4 herein, on September 16, 2011, SEI disposed of 3,694,736 shares of Common Stock.

(d) Another s right to receive dividends: Not applicable

(e) Date ceased to be a 5% owner: Not applicable

(3) Geraldine Schottenstein Hoffman

(a) Amount Beneficially Owned: 4,894,554 shares; Percent of Class: 2.5% (The shares are held in trusts for the benefit of family members as to which Ms. Hoffman is trustee).

(b) Number of Shares as to which such person has:

(i) Sole power to vote or to direct the vote: 4,649,148 shares
(ii) Shared power to vote or to direct the vote: 245,406 shares
(iii) Sole power to dispose or to direct the disposition of: 4,649,148 shares
(iv) Shared power to dispose or to direct the disposition of: 245,406 shares

(c) Transactions effected by Ms. Hoffman through family trusts as to which Ms. Hoffman is either trustee or trust advisor during the past 60 days: None

(d) Another s right to receive dividends: Not applicable

(e) Date ceased to be a 5% owner: October 27, 2009

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ITEM 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

Jay L. Schottenstein, Ann S. Deshe, Susan Schottenstein Diamond, and Geraldine Schottenstein Hoffman entered into a Statement of Understanding dated as of April 7, 1999, by which each would advise the others a reasonable time prior to making sales of shares of the issuer's stock, and cooperate in effectuating sales of such shares, through a brokerage firm reasonably acceptable to each of them. If there are limits on the number of shares that may be sold at such time, the parties agreed that sales would be made pro rata in accordance with each individual's ownership of the issuer shares.

By letter dated June 5, 2006 addressed to Mr. Schottenstein, Ms. Diamond and Ms. Hoffman, Ms. Deshe withdrew her participation in the Statement of Understanding dated as of April 7, 1999 and thereby terminated her membership in the group within the meaning of Section 13(d)(3) of the Act. The letter was agreed to and accepted by Mr. Schottenstein, Ms. Diamond and Ms. Hoffman on June 14, 2006.

By letter dated November 15, 2007 addressed to Mr. Schottenstein and Ms. Hoffman, Ms. Diamond withdrew her participation in the Statement of Understanding dated as of April 7, 1999 and thereby terminated her membership in the group within the meaning of Section 13(d)(3) of the Act. The letter was agreed to and accepted by Mr. Schottenstein and Ms. Hoffman on November 15, 2007.

The information set forth and incorporated by reference in Items 4 and 5 with respect to the Voting Agreement is incorporated by reference herein.

ITEM 7.

Material to Be Filed as Exhibits

The following exhibit is filed with this schedule:

1. Voting and Stockholder Agreement dated September 16, 2011 among Jay L. Schottenstein and, Ann S. Deshe, Susan S. Diamond, and certain of their spouses, lineal descendants and affiliates, and the additional parties named therein.

The following exhibits are incorporated by reference and deemed filed with this schedule:

2. A Statement of Understanding , dated as of April 7, 1999, entered into by Mr. Schottenstein, Ms. Deshe, Ms. Diamond, and Ms. Hoffman, was previously filed and incorporated herein by reference.

3. A letter dated as of June 5, 2006 from Ms. Deshe to Mr. Schottenstein, Ms. Diamond and Ms. Hoffman withdrawing Ms. Deshe's participation in the "Statement of Understanding" dated as of April 7, 1999 was previously filed and incorporated herein by reference.

4. A letter dated as of November 15, 2007 from Ms. Diamond to Mr. Schottenstein and Ms. Hoffman withdrawing Ms. Diamond's participation in the "Statement of Understanding" dated as of April 7, 1999 was previously filed and incorporated herein by reference.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

DATED: September 20, 2011

/s/ Jay L. Schottenstein

Jay L. Schottenstein

SEI, INC.

DATED: September 20, 2011

By: /s/ Jay L. Schottenstein

Jay L. Schottenstein, Chairman

DATED: September 20, 2011

/s/ Geraldine Schottenstein Hoffman

Geraldine Schottenstein Hoffman

Schedule A

CERTAIN INFORMATION ABOUT THE EXECUTIVE
OFFICERS AND DIRECTORS OF THE REPORTING PERSON

Set forth below is the name, principal occupation and business address of each executive officer and director of SEI, Inc.

Name	Principal Occupation	Business Address
Jay L. Schottenstein	Chairman of the Board of Directors, CEO and President of SEI, Inc. and Chairman, CEO and President of Schottenstein Stores Corporation and holds positions with other public and privately-held entities	4300 E. Fifth Avenue Columbus OH 43219
Thomas R. Ketteler	Member of the Board of Directors of SEI, Inc. and Board member and consultant to Schottenstein Stores Corporation	4300 E. Fifth Avenue Columbus OH 43219
Brian Strayton	Member of the Board of Directors of SEI, Inc. and Vice President and Treasurer of Schottenstein Stores Corporation	4300 E. Fifth Avenue Columbus OH 43219
Benton E. Kraner	President and Chief Operating Officer of Schottenstein Realty LLC	4300 E. Fifth Avenue Columbus OH 43219
Jeffry D. Swanson	Senior Vice President and Chief Financial Officer of Schottenstein Stores Corporation	4300 E. Fifth Avenue Columbus OH 43219
Irwin A. Bain	Senior Vice President, Secretary and General Counsel of Schottenstein Stores Corporation	4300 E. Fifth Avenue Columbus OH 43219
Tod H. Friedman	Executive Vice President and General Counsel of Schottenstein Realty LLC	4300 E. Fifth Avenue Columbus OH 43219

e Company set forth in this Agreement and performance by the Company of its obligations under Section 5.2(a), the aggregate proceeds of the Debt Financing, together with any cash or cash equivalents held by Parent, as of the Second Effective Time, will be sufficient to enable them to pay in cash all amounts required to be paid by them in connection with the

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Transactions, including the Merger Consideration (and the treatment of Stock Options, Restricted Shares, Company Performance RSUs and Company ESPP pursuant to Section 2.5) and all payments, fees and expenses payable by them related to or arising out of the consummation of the Transactions.

(c) In no event shall the receipt or availability of any funds or financing (including, for the avoidance of doubt, the Debt Financing) by Parent, Merger Sub or any of their respective Affiliates or any other financing be a condition to any of Parent s or Merger Sub s obligations hereunder.

SECTION 4.23. No Other Representations or Warranties.

(a) Except for the representations and warranties set forth in this Article IV, neither Parent nor any other Person makes or has made any express or implied representation or warranty with respect to Parent or with respect to any other information provided to the Company, Merger Sub One or New EP in connection with the Transactions. Without limiting the generality of the foregoing, neither Parent nor any other Person will have or be subject to any liability or other obligation to the Company, Merger Sub One, New EP or any other Person resulting from the distribution to the Company, Merger Sub One or New EP (including their Representatives), or the Company s, Merger Sub One s or New EP s (or such Representatives) use of, any such information, including any information, documents, projections, forecasts of other material made available to the Company, Merger Sub One or New EP in certain data rooms or management presentations in expectation of the Transactions.

(b) Each of Parent, Merger Sub Two and Merger Sub Three has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company Subsidiaries and acknowledges that each of Parent, Merger Sub Two and Merger Sub Three has been provided access for such purposes. Except for the representations and warranties expressly set forth in this Agreement, in entering into this Agreement, each of Parent, Merger Sub Two and Merger Sub Three has relied solely upon its independent investigation and analysis of the Company and the Company Subsidiaries, and each of Parent, Merger Sub Two and Merger Sub Three acknowledges and agrees that it has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by the Company, any Company Subsidiaries, or any of their respective affiliates, stockholders, controlling persons or Company representatives that are not expressly set forth in this Agreement, whether or not such representations, warranties or statements were made in writing or orally. Each of Parent, Merger Sub Two and Merger Sub Three acknowledge and agree that, except for the representations and warranties expressly set forth in this Agreement (i) the Company does not make, or has not made, any representations or warranties relating to itself or its business or otherwise in connection with the Transactions and each of Parent, Merger Sub Two and Merger Sub Three are not relying on any representation or warranty except for those expressly set forth in this Agreement, (ii) no Person has been authorized by the Company to make any representation or warranty relating to itself or its business or otherwise in connection with the Transactions, and if made, such representation or warranty must not be relied upon by Parent, Merger Sub Two and Merger Sub Three as having been authorized by such party and (iii) any estimates, projections, predictions, data, financial information, memoranda, presentations or any other materials or information provided or addressed to Parent, Merger Sub Two, Merger Sub Three or any of their representatives are not and shall not be deemed to be or include representations or warranties unless any such materials or information is the subject of any express representation or warranty set forth in Article III of this Agreement.

ARTICLE V

Additional Covenants and Agreements

SECTION 5.1. Preparation of the Form S-4 and the Joint Proxy/Information Statement and the Appraisal Notice; Stockholder Meetings.

(a) As soon as practicable following the date of this Agreement, the Company and Parent shall prepare and file with the SEC the Joint Proxy/Information Statement and the Company and Parent shall prepare and Parent

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shall file with the SEC the Form S-4, in which the Joint Proxy/Information Statement will be included as a prospectus. Each of the Company and Parent shall use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing and keep the Form S-4 effective for so long as necessary to consummate the Transactions. The Company shall use its reasonable best efforts to cause the Joint Proxy/Information Statement to be mailed to the stockholders of the Company and Parent shall use its reasonable best efforts to cause the Joint Proxy/Information Statement to be mailed to the stockholders of Parent, in each case as promptly as practicable after the Form S-4 is declared effective under the Securities Act. No filing of, or amendment or supplement to, the Form S-4 will be made by Parent, and no filing of, or amendment or supplement to, the Joint Proxy/Information Statement will be made by the Company or Parent, in each case without providing the other party a reasonable opportunity to review and comment thereon. If at any time prior to the Second Effective Time any information relating to the Company or Parent, or any of their respective Affiliates, directors or officers, should be discovered by the Company or Parent which should be set forth in an amendment or supplement to either the Form S-4 or the Joint Proxy/Information Statement, so that either such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the stockholders of the Company and the stockholders of Parent. The parties shall notify each other promptly of the receipt of any comments from the SEC or the staff of the SEC and of any request by the SEC or the staff of the SEC for amendments or supplements to the Joint Proxy/Information Statement or the Form S-4 or for additional information and shall supply each other with copies of (i) all correspondence between it or any of its Representatives, on the one hand, and the SEC or the staff of the SEC, on the other hand, with respect to the Joint Proxy/Information Statement, the Form S-4 or the Transactions and (ii) all orders of the SEC relating to the Form S-4. As soon as practicable following the date of the Company Stockholder Approval, the Company shall prepare, in consultation with Parent, a notice that complies with Section 262(d)(2) of the DGCL notifying the shareholders of New EP that the Second Merger has been approved by the Company who was the sole stockholder of New EP prior to the First Effective Time and the availability of appraisal rights in the Second Merger, which notice shall include a copy of Section 262 of the DGCL (the Appraisal Notice). The Company shall use its reasonable best efforts to cause the Appraisal Notice to be mailed to the stockholders of New EP as promptly as practicable after the Company Stockholder Approval. The Company shall use its reasonable best efforts to cause the shares of common stock of New EP to be issued pursuant to and in accordance with this Agreement and the First Merger Agreement in connection with the First Merger to be approved for listing (subject, if applicable, to notice of issuance) for trading on the NYSE prior to the closing of the First Merger.

(b) The Company shall, as soon as practicable following the date of this Agreement, establish a record date for, duly call, give notice of, convene and hold a special meeting of its stockholders (the Company Stockholders Meeting) solely for the purpose of obtaining the Company Stockholder Approval. Subject to Section 5.3, the Company shall, through the Company Board, recommend to its stockholders adoption of this Agreement (the Company Board Recommendation). The Joint Proxy/Information Statement shall include a copy of the Company Fairness Opinion and (subject to Section 5.3) the Company Board Recommendation. Without limiting the generality of the foregoing, but subject to Section 5.3, the Company s obligations pursuant to the first sentence of this Section 5.1(b) shall not be affected by (i) the commencement, public proposal, public disclosure or communication to the Company of any Takeover Proposal or (ii) the withdrawal or modification by the Company Board or any committee thereof of the Company Board Recommendation or the Company Board s or such committee s approval of this Agreement or the Transactions. Notwithstanding anything in this Agreement to the contrary, the Company may postpone or adjourn the Company Stockholder Meeting (i) to solicit additional proxies for the purpose of obtaining the Company Stockholder Approval, (ii) for the absence of quorum, (iii) to allow reasonable additional time for the filing and/or mailing of any supplemental or amended disclosure which the Company has determined after consultation with outside legal counsel is necessary under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the stockholders of the Company prior to the Company Stockholder Meeting and (iv) if the Company has delivered any notice contemplated by Section 5.3(d) and the time periods contemplated by Section 5.3(d) have not expired.

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(c) Parent shall, as soon as practicable following the date of this Agreement, establish a record date for, duly call, give notice of, convene and hold a meeting of its stockholders (the Parent Stockholders Meeting) for the purpose of obtaining the Parent Stockholder Approval. Parent shall, through the Parent Board, recommend to its stockholders to approve the issuance of shares of Parent Class P Stock (including the shares of Parent Class P Stock issuable upon the exercise of the Parent Class P Warrants issued in the Second Merger) and the Parent Class P Warrants (the Parent Board Recommendation). The Joint Proxy/Information Statement shall include a copy of the Parent Fairness Opinion and the Parent Board Recommendation.

SECTION 5.2. Conduct of Business.

(a) Except (i) as expressly permitted by this Agreement, (ii) as set forth in the Company Disclosure Schedule, (iii) as required by applicable Law, (iv) as provided for or contemplated by any agreement of the Company in effect as of the date of this Agreement or (v) as agreed in writing by Parent (which consent shall not be unreasonably withheld, delayed or conditioned), during the period from the date of this Agreement until the Second Effective Time, the Company shall, and shall cause each of its Subsidiaries and the Company Joint Ventures to (provided, that with respect to the Company Joint Ventures, the Company shall cause such actions to occur to the maximum extent permitted by the organizational documents and governance arrangements of each Company Joint Venture and, to the extent applicable, its fiduciary duties in relation to each Company Joint Venture): (u) conduct its business in the ordinary course consistent with past practice, (v) comply in all material respects with all applicable Laws and the requirements of all Company Material Contracts, (w) use commercially reasonable efforts to maintain and preserve intact its business organization and the goodwill of those having business relationships with it and retain the services of its present officers and key employees and (x) use its commercially reasonable efforts to keep in full force and effect all material insurance policies maintained by the Company, its Subsidiaries and the Company Joint Ventures, other than changes to such policies made in the ordinary course of business. Without limiting the generality of the foregoing, except (i) as expressly permitted by this Agreement, (ii) as set forth in the Company Disclosure Schedule, (iii) as required by applicable Law, or (iv) as agreed in writing by Parent (in the case of clauses (iii), (iv), (v), (vi), (vii), (viii), (xii), (xiii), (xiv)(C), (xv) and (xvi) (but, with respect to (xvi), only to the extent applicable to the other clauses designated in this Section 5.2(a)(v)) below, such consent shall not be unreasonably withheld, delayed or conditioned), during the period from the date of this Agreement to the Second Effective Time, the Company shall not, and shall not permit any of its Subsidiaries and the Company Joint Ventures to (provided, that with respect to the Company Joint Ventures, the Company shall cause such actions not to occur to the maximum extent permitted by the organizational documents and governance arrangements of each Company Joint Venture and, to the extent applicable, its fiduciary duties in relation to each Company Joint Venture):

(i)(A) issue, sell, grant, dispose of, accelerate the vesting of or modify as applicable, any shares of its capital stock, voting securities or equity interests, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of its capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of its capital stock, voting securities or equity interests or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for, any shares of its capital stock, voting securities or equity interests, provided that the Company may issue shares of Company Common Stock upon the exercise of options granted under the Company Stock Plans or the Company ESPP or the settlement of any Company Performance RSUs, in each case which are outstanding on the date of this Agreement or granted after the date of this Agreement to the extent permitted by Section 5.2(a)(viii) and in accordance with the terms thereof; (B) redeem, purchase or otherwise acquire any of its outstanding shares of capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to acquire any shares of its capital stock, voting securities or equity interests, except in connection with the exercise of any Company Stock Options or the vesting, settlement or forfeiture of, or tax withholding with respect to, any equity or equity-based awards granted under the Company Stock Plans and outstanding as of the date of this Agreement or granted after the date of this Agreement to the extent permitted by Section 5.2(a)(viii); (C) declare, set aside

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for payment or pay any dividend on, or make any other distribution in respect of, any shares of its capital stock, or otherwise make any payments to its stockholders in their capacity as such (other than (x) dividends by a direct or indirect Subsidiary of the Company to its parent, (y) the Company s regular quarterly dividend in an amount not to exceed $0.01 per share of Company Common Stock or (z) as provided on Section 5.2(a)(i) of the Company Disclosure Schedule in connection with distributions by EPB) or (D) split, combine, subdivide or reclassify any shares of its capital stock;

(ii)(x) incur, refinance or assume any indebtedness for borrowed money or guarantee any such indebtedness for borrowed money (or enter into a keep well or similar agreement with respect to such indebtedness) or issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of the Company or any of its Subsidiaries or the Company Joint Ventures, other than (A) (I) borrowings by the Company in amounts not in excess of $100,000,000 in the aggregate, (II) borrowings under the Company s existing credit agreements listed on Section 5.2(a)(ii)(A) of the Company Disclosure Schedule other than those described in (A)(III) below, (III) borrowings under (1) the Company s Fourth Amended and Restated Credit Agreement, dated as of May 27, 2011 (the Existing EP Credit Agreement) or any replacement thereof, which may not exceed $700,000,000 in the aggregate and (2) the E&P BNP Paribas Credit Agreement or any replacement thereof, which may not exceed $700,000,000 in the aggregate (the Revolver Caps), except that the Company will not be subject to the Revolver Caps until the last day of the month preceding the month that the Closing occurs and the Company will not be subject to the Revolver Caps at any time if the Company does not sell assets to EPB valued at at least the amount set forth on Section 5.2(a)(iii)(E) of the Company Disclosure Schedule by the last day of such month) and guarantees of such borrowings issued by the Company s Subsidiaries to the extent required under the terms of such credit facility and (IV) refinancing replacement, amendment or amendment and restatement of any indebtedness that may default or come due as a result of the Transactions (provided, that the Company will consult with Parent in connection with any such action) or that is required to be repaid or repurchased pursuant to its terms (provided, that (i) neither the Company nor any of its Subsidiaries shall be entitled to incur any indebtedness under the 364-Day Credit Agreement and (ii) except with respect to (A)(II), (III) or (IV) above, the Company and its Subsidiaries shall not be permitted to incur or assume any indebtedness for borrowed money or sell any debt securities to the extent that the terms of such indebtedness or debt securities would be breached by, conflict with or require the consent of any third party in order to continue in full force following, the consummation of the Transactions), (B) borrowings from the Company or any Subsidiary thereof by the Company or any Subsidiary thereof, (C) repayments of borrowings from the Company or any Subsidiary thereof by the Company or any Subsidiary thereof and guarantees by the Company or any Subsidiary thereof of indebtedness of the Company or any Subsidiary thereof and (D) borrowings by EPB as provided on Section 5.2(a)(ii)(D) of the Company Disclosure Schedule, or (y) except as permitted pursuant to clause (x) above, prepay or repurchase any long-term indebtedness for borrowed money or debt securities of the Company or any of the Subsidiaries (other than (i) revolving indebtedness, (ii) borrowing from the Company or any Subsidiary thereof by the Company or any Subsidiary thereof and (iii) repayments or repurchases required pursuant to the terms of such indebtedness or debt securities);

(iii) sell, transfer, lease, farmout or otherwise dispose of (including pursuant to a sale-leaseback transaction or an asset securitization transaction) any of its properties or assets (including securities of Subsidiaries and the Company Joint Ventures) with a fair market value in excess of $75,000,000 in the aggregate, except (A) pursuant to Contracts in force at the date of this Agreement and listed on Section 5.2(a)(iii)(A) of the Company Disclosure Schedule, correct and complete copies of which have been made available to Parent and other potential transactions listed on Section 5.2(a)(iii)(A) of the Company Disclosure Schedule, (B) dispositions of obsolete or worthless equipment which is replaced with equipment and materials of comparable or better value and utility, (C) sales of produced hydrocarbons in the ordinary course of business consistent with past practice, (D) sales, transfers, leases, farmouts or other disposals to the Company or any of its Subsidiaries or (E) sales or transfers to EPB as provided on Section 5.2(a)(iii)(E) of the Company Disclosure Schedule;

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(iv) make any capital expenditure or capital expenditures in excess of $150,000,000 through September 30, 2012 and $25 million thereafter, in the aggregate, in each case, except for any such capital expenditures provided for in the Company s Capital Expenditure Forecast, in each case, as set forth in Section 5.2(a)(iv) of the Company Disclosure Schedule, or in each case except as may be reasonably required to conduct emergency operations, repairs or replacements on any well, pipeline, or other facility or as required by a change in Law;

(v) except as set forth in Section 5.2(a)(v) of the Company Disclosure Schedule, directly or indirectly acquire (A) by merging or consolidating with, or by purchasing all of or a substantial equity interest in, or by any other manner, any Person or division, business or equity interest of any Person or, (B) except in the ordinary course of business consistent with past practice, any assets that, in the aggregate, have a purchase price in excess of $50,000,000;

(vi) except as set forth in Section 5.2(a)(vi) of the Company Disclosure Schedule, make (A) any investments (by contribution to capital, property transfers, purchase of securities or otherwise), other than investments in the Company or any of its Subsidiaries, in excess of $50,000,000, in the aggregate, or (B) any loans or advances (1) in excess of $5,000,000 in the aggregate (other than (x) travel and similar advances to its employees in the ordinary course of business consistent with past practice and (y) loans and advances to the Company or any of its Subsidiaries) or (2) to any employee of the Company or any Subsidiary in excess of $100,000 (other than relocation expenses to its employees in the ordinary course of business consistent with past practice);

(vii)(A) enter into, terminate or amend any Company Material Contract other than in the ordinary course of business or as permitted under clause (ii) above, (B) enter into or extend the term or scope of any Contract that materially restricts the Company, or any existing or future Subsidiary or Affiliate of the Company, from engaging in any line of business or in any geographic area, (C) amend or modify the Company Engagement Letters, (D) enter into any Company Material Contract that would be breached by, or require the consent of any third party in order to continue in full force following, consummation of the Transactions except as permitted under clause (ii) above, (E) release any Person from, or modify or waive any provision of, any standstill or similar agreement, in each case, related to a sale of the Company or any of its material Subsidiaries or, release any Person from, or modify or waive any provision of any confidentiality agreement (but only to the extent a person listed on Section 8.11(a) of the Company Disclosure Schedule has knowledge of the occurrence of such release, modification or waiver at the time of such release, modification or waiver), (F) enter into any commitment or agreement to license or purchase seismic data, other than commitments or agreements enter into in the ordinary course of business consistent with past practice, (G) except as set forth in Section 5.2(a)(vii) of the Company Disclosure Schedule, make or assume any additional Derivative, other than Derivatives entered into in the ordinary course of business, consistent with past practice, and not exceeding seventy percent (70%) of the Company s and its Subsidiary s collective expected hydrocarbon production volumes for the current, or any subsequent, calendar year; provided, however, that any such Derivative shall provide that commercially reasonable substitute credit support may be provided by the Company or its Subsidiary in place of the Company s (or its Subsidiary s) existing credit facility, and, if such condition has been satisfied, there shall be no breach of, or default under, or right of termination, cancellation, or acceleration of any obligation, or to the loss of a benefit under, each such Derivative in connection with the consummation of the transactions contemplated by this Agreement;

(viii) except as required by applicable Law (including to avoid the imposition of any penalty taxes under Section 409A of the Code) or as set forth in Section 5.2(a)(viii) of the Company Disclosure Schedule, (A) increase in any manner the salary or wages of any of its employees or directors, (B) pay any bonus or incentive compensation, (C) grant any new equity or non-equity based compensation award, (D) enter into, establish, amend or terminate any Company Benefit Plan, Company Collective Bargaining Agreement or trust or fund with, for or in respect of, any stockholder, director, officer, other employee, or consultant, (E) hire any new employees, or (F) except as required under or in respect of any Company Benefit Plan, fund any Company Benefit Plan or trust relating thereto;

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(ix) make, change or revoke any material election concerning Taxes or Tax Returns, file any U.S. federal income tax return for the taxable year ending December 31, 2011 prior to September 10, 2012 or, if Closing has not occurred prior to September 10, 2012, make any election not to claim (or take any action that would cause Ruby Pipeline Holding Company, L.L.C., Gulf LNG Holdings Group, LLC, Citrus Corp. or any of their respective Subsidiaries not to claim) bonus depreciation on any U.S. federal income tax return for the taxable year ending December 31, 2011 or approve or join in the making of any such election (or the taking of any such action), file any material amended Tax Return, change any method of Tax accounting or any Tax accounting period, enter into any closing agreement with respect to Taxes, settle any material Tax claim or assessment for an amount materially in excess of the reserves therefor or surrender any right to claim a material refund of Taxes or obtain any Tax ruling;

(x) make any changes in financial accounting methods, principles or practices (or change an annual accounting period), except insofar as may be required by a change in GAAP or applicable Law;

(xi) amend the Company Charter Documents;

(xii) adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization (other than transactions exclusively between wholly owned Subsidiaries of the Company);

(xiii) except as provided under any agreement entered into prior to the date of this Agreement or with respect to matters addressed in Section 5.2(a)(xiv) below, pay, discharge, settle or satisfy any suit, action, claims or proceeding, in excess of $10,000,000 individually or $25,000,000 in the aggregate;

(xiv) except as set forth in Section 5.2(a)(xiv) of the Company Disclosure Schedule, (A) initiate, file or terminate any rate case with the Federal Energy Regulatory Commission (FERC) relating to any assets of the Company or any of its Subsidiaries, (B) make any material change to any FERC tariff of the Company or any of its Subsidiaries or (C) settle or discharge any rate case with FERC relating to any assets of the Company or any of its Subsidiaries;

(xv) voluntarily resign, transfer, or relinquish any right as operator of any Material Upstream Asset Group, except as required by Law or as may result automatically and without further action by the Company or any Subsidiary of the Company as a result of the Transactions; or

(xvi) agree, in writing or otherwise, to take any of the foregoing actions, or take any action or agree, in writing or otherwise, to take any action which would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the Transactions set forth in this Agreement.

(b) Except (i) as expressly permitted by this Agreement, (ii) as set forth in the Parent Disclosure Schedule, (iii) as required by applicable Law, (iv) as provided for or contemplated by any agreement of Parent in effect as of the date of this Agreement or (v) as agreed in writing by the Company (which consent shall not be unreasonably withheld, delayed or conditioned), during the period from the date of this Agreement until the Second Effective Time, Parent shall, and shall cause each of its Subsidiaries and the Parent Joint Ventures to (provided, that with respect to the Parent Joint Ventures, Parent shall cause such actions to occur to the maximum extent permitted by the organizational documents and governance arrangements of each Parent Joint Venture and, to the extent applicable, its fiduciary duties in relation to each Parent Joint Venture): (w) conduct its business in the ordinary course consistent with past practice, (x) comply in all material respects with all applicable Laws and the requirements of all Parent Material Contracts, (y) use commercially reasonable efforts to maintain and preserve intact its business organization and the goodwill of those having business relationships with it and retain the services of its present officers and key employees, and (z) use its commercially reasonable efforts to keep in full force and effect all material insurance policies maintained by Parent, its Subsidiaries and the Parent Joint Ventures, other than changes to such policies made in the ordinary course of business. Without limiting the generality of the foregoing, except (i) as expressly permitted by this Agreement, (ii) as set forth in the Parent Disclosure Schedule, (iii) as required by applicable Law or (iv) as agreed in writing by the Company (such consent shall not be unreasonably withheld, delayed or conditioned) during the period from the date of this

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Agreement to the Second Effective Time, Parent shall not, and shall not permit any of its Subsidiaries (other than KMP and Kinder Morgan Management, LLC and their respective Subsidiaries) and the Parent Joint Ventures to (provided, that with respect to the Parent Joint Ventures, Parent shall cause such actions not to occur to the maximum extent permitted by the organizational documents and governance arrangements of each Parent Joint Venture and, to the extent applicable, its fiduciary duties in relation to each Parent Joint Venture):

(i)(A) issue, sell, or dispose of any shares of its capital stock, voting securities or equity interests, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of its capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of its capital stock, voting securities or equity interests or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for, any shares of its capital stock, voting securities or equity interests, other than in connection with (x) the exercise of options for Parent stock that are outstanding on, or granted after, the date of this Agreement in accordance with the terms thereof or the vesting or settlement of any equity or equity-based award that is outstanding on, or granted after, the date of this Agreement in accordance with the terms thereof, (y) the conversion of any shares of Parent Common Stock in accordance with the Parent Charter Documents and (z) as set forth on Section 5.2(b)(i) of the Parent Disclosure Schedule; (B) redeem, purchase or otherwise acquire any of its outstanding shares of capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to acquire any shares of its capital stock, voting securities or equity interests, other than in connection with (1) the exercise of options for Parent stock that are outstanding on, or granted after, the date of this Agreement in accordance with the terms thereof or the vesting, settlement or forfeiture of, or tax withholding with respect to, any equity or equity-based award that is outstanding on, or granted after, the date of this Agreement in accordance with the terms thereof and (2) the conversion of any shares of Parent Common Stock in accordance with the Parent Charter Documents; (C) declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of its capital stock, or otherwise make any payments to its stockholders in their capacity as such (other than (x) dividends by a direct or indirect Subsidiary of Parent to its parent, (y) Parent s regular quarterly dividend in an amount not to exceed $0.60 per share of Parent Common Stock per fiscal quarter or (z) as provided in Section 5.2(b)(i) of the Parent Disclosure Schedule) or (D) split, combine, subdivide or reclassify any shares of its capital stock;

(ii) incur or assume any indebtedness for borrowed money or guarantee any indebtedness (or enter into a keep well or similar agreement) or issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of Parent or any of its Subsidiaries or the Parent Joint Ventures, other than (A) borrowings by Parent or any of its Subsidiaries or the Parent Joint Ventures in amounts not in excess of $1,000,000,000 in the aggregate outstanding at any time and guarantees of such borrowings issued by Parent s Subsidiaries to the extent required under the terms of such credit facility, and (B) borrowings from Parent by a direct or indirect wholly owned Subsidiary of Parent in the ordinary course of business; provided, that for the avoidance of doubt, in no event shall this clause (ii) restrict or prevent in any manner Parent or any of its Subsidiaries from incurring the Debt Financing or the Replacement Debt Financing in order to consummate the Transactions;

(iii) (A) acquire by merging or consolidating with, or by purchasing all of or a substantial equity interest in, or by any other manner, any Person or division, business or equity interest of any Person or, (B) acquire except in the ordinary course of business, any assets that have a purchase price in excess of $50,000,000 in the aggregate or (C) make any capital expenditure or expenditures, except for any such capital expenditures as may be reasonably required to conduct emergency operations on any well, pipeline, or other facility, or as does not exceed $50,000,000, in the aggregate;

(iv) make any investment (by contribution to capital, property transfers, purchase of securities or otherwise) in, or loan or advance (other than travel and similar advances to its employees in the ordinary course of business consistent with past practice) to, any Person in excess of $50,000,000 in the aggregate;

(v) amend the Parent Charter Documents or the Parent Shareholders Agreement;

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(vi) adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization (other than transactions exclusively between wholly owned Subsidiaries of Parent); or

(vii) agree, in writing or otherwise, to take any of the foregoing actions, or take any action or agree, in writing or otherwise, to take any action which would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the Transactions set forth in this Agreement (including, but not limited to, entering into any Parent Alternative Transaction if such Parent Alternative Transaction would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the Transactions set forth in this Agreement).

SECTION 5.3. No Solicitation by the Company; Etc.

(a) The Company shall, and shall cause its Subsidiaries and use reasonable best efforts to cause the Company s and its Subsidiaries respective directors, officers, employees, investment bankers, financial advisors, attorneys, accountants, agents and other representatives (collectively, Representatives) to, immediately cease and cause to be terminated any discussions or negotiations with any Person conducted heretofore with respect to a Takeover Proposal, and request the return or destruction of all confidential information previously provided to such parties by or on behalf of the Company or its Subsidiaries. Except as permitted by this Section 5.3, (x) the Company shall not, and shall cause its Subsidiaries and use reasonable best efforts to cause its Representatives not to, directly or indirectly (i) solicit, initiate, knowingly facilitate, knowingly encourage (including by way of furnishing information) or knowingly induce or take any other action designed to lead to any inquiries or proposals that constitute, or would reasonably be expected to lead to, the submission of a Takeover Proposal, (ii) except for a confidentiality agreement permitted pursuant to Section 5.3(b), enter into any confidentiality agreement, merger agreement, letter of intent, agreement in principle, share purchase agreement, asset purchase agreement or share exchange agreement, option agreement or other similar agreement relating to a Takeover Proposal (an Acquisition Agreement), or (iii) withdraw, modify or qualify, or propose publicly to withdraw, modify or qualify, in a manner adverse to Parent, the Company Board Recommendation or publicly recommend the approval or adoption of, or publicly approve or adopt, or propose to publicly recommend, approve or adopt, any Takeover Proposal and (y) within five (5) business days of receipt of a written request of Parent, the Company shall, publicly reconfirm the Company Board Recommendation; provided, that, in the event that Parent requests such public reconfirmation of the Company Board Recommendation, then Parent s request must be reasonable (in terms of number and timing) and the Company may not unreasonably withhold, delay (beyond the five (5) business day period) or condition the public reconfirmation of the Company Board Recommendation (the taking of any action described in clause (x)(iii) or the failure to take the action described in clause (y) being referred to as an Adverse Recommendation Change). Without limiting the foregoing, it is understood that any violation of the foregoing restrictions by the Company s Subsidiaries or Representatives shall be deemed to be a breach of this Section 5.3 by the Company.

(b) Notwithstanding anything to the contrary contained in Section 5.3(a), if at any time following the date of this Agreement and prior to obtaining the Company Stockholder Approval (but in no event after obtaining the Company Stockholder Approval), (i) the Company has received a written Takeover Proposal that the Company Board believes is *bona fide*, (ii) the Company Board, after consultation with its financial advisors and outside legal counsel, determines in good faith that such Takeover Proposal constitutes or could reasonably be expected to lead to or result in a Superior Proposal and (iii) such Takeover Proposal did not result from a material breach of this Section 5.3, then the Company may, subject to clauses (x) and (y) below, (A) furnish information with respect to the Company and its Subsidiaries to the Person making such Takeover Proposal and (B) participate in discussions or negotiations regarding such Takeover Proposal; provided, that (x) the Company will not, and will use reasonable best efforts to cause its Representatives not to, disclose any non-public information to such Person unless the Company has, or first enters into, a confidentiality agreement with such Person with confidentiality provisions that are not less restrictive to such Person than the provisions of the Confidentiality Agreement are to Parent (provided, that such confidentiality agreement need not include standstill provisions or restrictions of

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the type contained in the Confidentiality Agreement) and that would not prohibit compliance by the Company with the provisions of this Section 5.3, and (y) the Company will provide to Parent any non-public information concerning the Company or its Subsidiaries that was not previously provided or made available to Parent prior to or substantially concurrently with providing or making available such non-public information to such other Person.

(c) In addition to the other obligations of the Company set forth in this Section 5.3, the Company shall promptly advise Parent, orally and in writing, and in no event later than twenty-four (24) hours after receipt, if any proposal, offer, inquiry or other contact is received by, any information is requested from, or any discussions or negotiations are sought to be initiated or continued with, the Company in respect of any Takeover Proposal, and shall, in any such notice to Parent, indicate the identity of the Person making such proposal, offer, inquiry or other contact and the terms and conditions of any proposals or offers or the nature of any inquiries or contacts (and shall include with such notice copies of any written materials received from or on behalf of such Person relating to such proposal, offer, inquiry or request), and thereafter shall promptly keep Parent reasonably informed of all material developments affecting the status and terms of any such proposals, offers, inquiries or requests (and the Company shall promptly provide Parent with copies of any additional written materials received by the Company or that the Company has delivered to any third party making a Takeover Proposal that relate to such proposals, offers, inquiries or requests) and of the status of any such discussions or negotiations.

(d) Notwithstanding the foregoing, if (i) the Company receives a written Takeover Proposal that the Company Board believes is *bona fide*, and (ii) the Company Board, after consultation with its financial advisors and outside legal counsel, concludes in good faith that such Takeover Proposal constitutes a Superior Proposal, then, subject to compliance with Section 7.3, the Company Board may at any time prior to obtaining the Company Stockholder Approval (but in no event after obtaining the Company Stockholder Approval), if it determines in good faith, after consultation with outside counsel, that the failure to take such action could be inconsistent with its fiduciary duties under applicable Law, (x) effect an Adverse Recommendation Change and/or (y) terminate this Agreement and concurrent with such termination cause the Company to enter into an Acquisition Agreement with respect to such Superior Proposal; provided, however, that the Company Board may not effect an Adverse Recommendation Change pursuant to the foregoing clause (x) or terminate this Agreement pursuant to the foregoing clause (y) unless the Company has provided prior written notice to Parent specifying in reasonable detail the reasons for such action (including a description of the material terms of such Takeover Proposal and delivering to Parent a copy of (1) the Acquisition Agreement for such Superior Proposal in the form to be entered into and (2) any other relevant documents that are reasonably relevant to the assessment of such Superior Proposal), at least five (5) calendar days in advance of its intention to take such action with respect to such Superior Proposal, unless at the time such notice is otherwise required to be given there are less than five (5) calendar days prior to the Company Stockholders Meeting, in which case the Company shall provide as much notice as is reasonably practicable (the period inclusive of all such days, the Notice Period) (it being understood and agreed that (i) during the Notice Period the Company shall, and shall use reasonable best efforts to cause its financial advisors and outside legal counsel to, negotiate with Parent in good faith (to the extent Parent desires to negotiate), (ii) the Company shall take into account all changes to the terms of this Agreement proposed by Parent in determining whether such Takeover Proposal continues to constitute a Superior Proposal and (iii) any material amendment to the terms of such Superior Proposal shall require a new notice pursuant to this Section 5.3(d) and new Notice Period, except that such new Notice Period in connection with any material amendment shall be for two (2) business days from the time Parent receives such notice (as opposed to five (5) calendar days). After delivery of such written notice pursuant to the immediately preceding sentence, the Company shall promptly keep Parent informed of all material developments affecting the material terms of any such Superior Proposal (and the Company shall provide Parent with copies of any additional written materials received that relate to such Superior Proposal).

(e) Notwithstanding anything in Section 5.3(a) to the contrary, the Company Board may, at any time prior to obtaining the Company Stockholder Approval, effect an Adverse Recommendation Change in response to an Intervening Event if the Company Board concludes in good faith, after consultation with outside counsel and its

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financial advisors, that the exercise of its fiduciary duties require such Adverse Recommendation Change. An Intervening Event means, with respect to the Company, a material event or circumstance that arises or occurs after the date of this Agreement and was not, prior to the date of this Agreement, reasonably foreseeable by the Company Board; provided, however, that in no event shall the receipt, existence or terms of a Takeover Proposal or any matter relating thereto or consequence thereof constitute an Intervening Event.

(f) For purposes of this Agreement:

Takeover Proposal means any inquiry, proposal or offer from any Person or group (as defined in Section 13(d) of the Exchange Act), other than Parent and its Subsidiaries, relating to any (A) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of the Company and its Subsidiaries (including securities of Subsidiaries) equal to 20% or more of the Company s consolidated assets or to which 20% or more of the Company s revenues or earnings on a consolidated basis are attributable, (B) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of beneficial ownership (within the meaning of Section 13 under the Exchange Act) of 20% or more of any class of equity securities of the Company, (C) tender offer or exchange offer that if consummated would result in any Person or group (as defined in Section 13(d) of the Exchange Act) beneficially owning 20% or more of any class of equity securities of the Company or (D) merger, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company which is structured to permit such Person or group to acquire beneficial ownership of at least 20% of the Company s consolidated assets or equity interests; in each case, other than the Transactions.

Superior Proposal means a *bona fide* written offer, obtained after the date of this Agreement and not in breach of this Section 5.3 (other than an immaterial breach), to acquire, directly or indirectly, for consideration consisting of cash and/or securities, more than 50% of the equity securities of the Company or assets of the Company and its Subsidiaries on a consolidated basis, made by a third party, which is on terms and conditions which the Company Board determines in its good faith (after consultation with outside counsel and an independent financial advisor) to be more favorable to the Company s stockholders from a financial point of view than the Transactions, taking into account at the time of determination any changes to the terms of this Agreement that as of that time had been proposed by Parent in writing.

(g) Nothing in this Section 5.3 shall prohibit the Company Board from taking and disclosing to the Company s stockholders a position contemplated by Rule 14e-2(a), Rule 14d-9 or Item 1012(a) of Regulation M-A promulgated under the Exchange Act if the Company Board determines in good faith, after consultation with outside counsel, that failure to so disclose such position could constitute a violation of applicable Law.

(h) Parent shall not, and shall cause its Subsidiaries not to and shall use reasonable best efforts to cause its Representatives not to, directly or indirectly (i) solicit, initiate, knowingly facilitate, knowingly encourage (including by way of furnishing information) or knowingly induce or take any other action designed to lead to any inquiries or proposals that constitute, or would reasonably be expected to lead to, the submission of a Parent Alternative Transaction or (ii) enter into any confidentiality agreement, merger agreement, letter of intent, agreement in principle, share purchase agreement, asset purchase agreement or share exchange agreement, option agreement or other similar agreement with respect to any transaction that would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the Transactions set forth in this Agreement. Nothing in this Section 5.3(h) or Section 5.2(b)(vii) shall be deemed to prevent Parent, its Subsidiaries or any of its Representatives from taking any action in connection with any transfer or proposed transfer of equity securities of Parent by the stockholders party to the Voting Agreement that is not in violation of the transfer restrictions set forth in the Voting Agreement to the extent that such transfer does not involve a merger, consolidation, share exchange, business combination, recapitalization, liquidation or similar transaction involving Parent or an exchange offer or tender offer for Parent s equity securities.

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SECTION 5.4. Best Efforts.

(a) Subject to the terms and conditions of this Agreement (including Section 5.4(d)), each of the parties hereto shall cooperate with the other parties and use (and shall cause their respective Subsidiaries to use) their respective best efforts to (i) take, or cause to be taken, all actions, and do, or cause to be done, all things, necessary, proper or advisable to cause the conditions to Closing to be satisfied as promptly as practicable (and in any event no later than the Extended Walk-Away Date) and to consummate and make effective, in the most expeditious manner practicable, the Transactions, including preparing and filing promptly and fully all documentation to effect all necessary filings, notifications, notices, petitions, statements, registrations, submissions of information, applications and other documents (including any required or recommended filings under applicable Antitrust Laws), (ii) obtain promptly (and in any event no later than the Extended Walk-Away Date) all approvals, consents, clearances, expirations or terminations of waiting periods, registrations, permits, authorizations and other confirmations from any Governmental Authority or third party necessary, proper or advisable to consummate the Transactions, (iii) defend any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Transactions and (iv) obtain all necessary consents, approvals or waivers from third parties. For purposes of this Agreement, Antitrust Laws means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, all applicable Foreign Antitrust Laws and all other applicable Laws issued by a Governmental Authority that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

(b) In furtherance and not in limitation of the foregoing, (i) each party hereto (including by their respective Subsidiaries) agrees to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the Transactions as promptly as practicable and in any event within fifteen (15) business days of the date of this Agreement and to supply as promptly as practicable any additional information and documentary material that may be requested by any Governmental Authority pursuant to the HSR Act or any other Antitrust Law and use its best efforts to take, or cause to be taken (including by their respective Subsidiaries), all other actions consistent with this Section 5.4 necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable (and in any event no later than the Extended Walk-Away Date); and (ii) the Company and Parent shall each use its reasonable best efforts to (x) take all action necessary to ensure that no state takeover statute or similar Law is or becomes applicable to any of the Transactions and (y) if any state takeover statute or similar Law becomes applicable to any of the Transactions, take all action necessary to ensure that the Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise minimize the effect of such Law on the Transactions.

(c) Each of the parties hereto shall use (and shall cause their respective Subsidiaries to use) its best efforts to (i) cooperate in all respects with each other in connection with any filing or submission with a Governmental Authority in connection with the Transactions and in connection with any investigation or other inquiry by or before a Governmental Authority relating to the Transactions, including any proceeding initiated by a private party, (ii) promptly inform the other party of (and supply to the other party) any communication received by such party from, or given by such party to, the Federal Trade Commission, the Antitrust Division of the Department of Justice, or any other Governmental Authority and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the Transactions, (iii) permit the other party to review in advance and incorporate the other party s reasonable comments in any communication to be given by it to any Governmental Authority with respect to obtaining any clearances required under any Antitrust Law in connection with the Transactions and (iv) consult with the other party in advance of any meeting or teleconference with any Governmental Authority or, in connection with any proceeding by a private party, with any other Person, and, to the extent not prohibited by the Governmental Authority or other Person, give the other party the opportunity to attend and participate in such meetings and teleconferences. Parent shall have the principal responsibility for devising and implementing the strategy for obtaining any clearances required under any Antitrust Law in connection with the Transactions and shall take the lead in all meetings and communications with any Governmental Authority in connection with obtaining such clearances, provided,

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however, that Parent shall consult in advance with the Company and in good faith take the Company s views into account regarding the overall strategy. The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this Section in a manner so as to preserve the applicable privilege.

(d) Parent (including by its Subsidiaries) agrees to take, or cause to be taken (including by its Subsidiaries), any and all steps and to make, or cause to be made (including by its Subsidiaries), any and all undertakings necessary to resolve such objections, if any, that a Governmental Authority may assert under any Antitrust Law with respect to the Transactions, and to avoid or eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Authority with respect to the Transactions, in each case, so as to enable the Closing to occur as promptly as practicable and in any event no later than the Extended Walk-Away Date, including, without limitation, (x) proposing, negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of any businesses, assets, equity interests, product lines or properties of Parent or the Company (or any of their respective Subsidiaries) or any equity interest in any joint venture held by Parent or the Company (or any of their respective Subsidiaries), (y) creating, terminating, or divesting relationships, ventures, contractual rights or obligations of the Company or Parent or their respective Subsidiaries and (z) otherwise taking or committing to take any action that would limit Parent s freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, equity interests, product lines or properties of Parent or the Company (including any of their respective Subsidiaries) or any equity interest in any joint venture held by Parent or the Company (or any of their respective Subsidiaries), in each case as may be required in order to obtain all approvals, consents, clearances, expirations or terminations of waiting periods, registrations, permits, authorizations and other confirmations required directly or indirectly under any Antitrust Law or to avoid the commencement of any action to prohibit the Transactions under any Antitrust Law, or, in the alternative, to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any action or proceeding seeking to prohibit the Transactions or delay the Closing beyond the Extended Walk-Away Date. To assist Parent in complying with its obligations set forth in this Section 5.4, the Company shall, and shall cause its Subsidiaries to, enter into one or more agreements requested by Parent to be entered into by any of them prior to the Closing with respect to any transaction to divest, hold separate or otherwise take any action that limits the Company s or its Subsidiaries freedom of action, ownership or control with respect to, or their ability to retain or hold, directly or indirectly, any of the businesses, assets, equity interests, product lines or properties of the Company or any of its Subsidiaries or any equity interest in any joint venture held by the Company or any of its Subsidiaries (each, a Divestiture Action); provided, however, that (i) the consummation of the transactions provided for in any such agreement for a Divestiture Action (a Divestiture Agreement) shall be conditioned upon the Closing or satisfaction of all of the conditions to Closing in a case where the Closing will occur immediately following such Divestiture Action (and where Parent has irrevocably committed to effect the Closing immediately following such Divestiture Action) and (ii) Parent shall indemnify for and hold the Company and its Subsidiaries harmless from all costs, expenses and liabilities incurred by the Company or its Subsidiaries arising from or relating to such Divestiture Agreement (other than any of the foregoing arising from the breach by the Company or any applicable Subsidiary of such Divestiture Agreement).

(e) In furtherance and not in limitation of the covenants of the parties contained in this Section 5.4, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement as violative of any Antitrust Law, each of the Company and Parent shall use best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transactions.

SECTION 5.5. Public Announcements. The initial press release with respect to the execution of this Agreement shall be a joint press release to be reasonably agreed upon by Parent and the Company. Thereafter, neither the Company nor Parent shall issue or cause the publication of any press release or other public

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announcement (to the extent previously issued or made in accordance with this Agreement) with respect to this Agreement or the Transactions without the prior consent of the other party (which consent shall not be unreasonably withheld or delayed), except as may be required by Law or by any applicable listing agreement with a national securities exchange or Nasdaq as determined in the good faith judgment of the party proposing to make such release (in which case such party shall not issue or cause the publication of such press release or other public announcement without prior consultation with the other party; provided, however that the Company shall not be required to consult with the other party with respect to a public announcement in connection with the receipt and existence of a Takeover Proposal that the board of directors of the Company believes is *bona fide* and matters related thereto or an Adverse Recommendation Change but nothing in this proviso shall limit any obligation of the Company under Section 5.3(d) to negotiate with Parent in good faith; provided, that each party and their respective controlled affiliates may make statements that are not inconsistent with previous press releases, public disclosures or public statements made by Parent or the Company in compliance with this Section 5.5.

SECTION 5.6. Access to Information; Confidentiality.

(a) Upon reasonable notice and subject to applicable Laws relating to the exchange of information, each party shall, and shall cause each of its Subsidiaries to afford to the other party and its Representatives reasonable access during normal business hours (and, with respect to books and records, the right to copy) to all of its and its Subsidiaries properties (including the Upstream Assets), commitments, books, Contracts, records and correspondence (in each case, whether in physical or electronic form), officers, employees, accountants, counsel, financial advisors and other Representatives. Each party shall furnish promptly to the other party (i) a copy of each report, schedule and other document filed or submitted by it pursuant to the requirements of federal or state securities Laws and a copy of any communication (including comment letters) received by such party from the SEC concerning compliance with securities Laws and (ii) all other information concerning its and its Subsidiaries business, properties and personnel as the other party may reasonably request (including information necessary to prepare the Joint Proxy/Information Statement). Except for disclosures permitted by the terms of the Confidentiality Agreement, dated as of September 22, 2011, between Parent and the Company (as it may be amended from time to time, the Confidentiality Agreement), each party and its Representatives shall hold information received from the Company pursuant to this Section 5.6 in confidence in accordance with the terms of the Confidentiality Agreement. The Company shall (and shall cause its Subsidiaries to) use reasonable efforts (including the assertion of any rights of Company or its Subsidiaries to information to which such person is entitled pursuant to an applicable joint operating agreement) to obtain permission for Parent and its representatives to gain access to Upstream Assets operated or held by third persons and the records and files of such third Persons.

(b) This Section 5.6 shall not require either party to permit any access, or to disclose any information, that in the reasonable, good faith judgment (after consultation with counsel, which may be in-house counsel) of such party would reasonably be expected to result in (i) any violation of any contract or Law to which such party or its Subsidiaries is a party or is subject or cause any privilege (including attorney-client privilege) which such party or any of its Subsidiaries would be entitled to assert to be undermined with respect to such information and such undermining of such privilege could in such party s good faith judgment (after consultation with counsel, which may be in-house counsel) adversely affect in any material respect such party s position in any pending or, what such party believes in good faith (after consultation with counsel, which may be in-house counsel) could be, future litigation or (ii) if such party or any of its Subsidiaries, on the one hand, and the other party or any of its Subsidiaries, on the other hand, are adverse parties in a litigation, such information being reasonably pertinent thereto; provided, that, in the cases of clause (i), the parties hereto shall cooperate in seeking to find a way to allow disclosure of such information (including by entering into a joint-defense or similar agreement) to the extent doing so (1) would not (in the good faith belief of the party being requested to disclose the information (after consultation with counsel, which may be in-house counsel)) reasonably be likely to result in the violation of any such contract or Law or reasonably be likely to cause such privilege to be undermined with respect to such information or (2) could reasonably (in the good faith belief of the party being requested to disclose the

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information (after consultation with counsel which may be in-house counsel)) be managed through the use of customary clean-room arrangements pursuant to which non-employee Representatives of the other party shall be provided access to such information; provided, further, that the party being requested to disclose the information shall (x) notify the other party that such disclosures are reasonably likely to violate its or its Subsidiaries obligations under any such contract or Law or are reasonably likely to cause such privilege to be undermined, (y) communicate to the other party in reasonable detail the facts giving rise to such notification and the subject matter of such information (to the extent it is able to do so in accordance with the first proviso in this Section 5.6(b)) and (z) in the case where such disclosures are reasonably likely to violate its or its Subsidiaries obligations under any contract, use reasonable commercial efforts to seek consent from the applicable third party to any such contract with respect to the disclosures prohibited thereby (to the extent not otherwise expressly prohibited by the terms of such contract).

(c) No investigation, or information received, pursuant to this Section 5.6 will modify any of the representations and warranties of the parties hereto.

SECTION 5.7. Notification of Certain Matters. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (i) any notice or other communication received by such party from any Governmental Authority in connection with the Transactions or from any Person alleging that the consent of such Person is or may be required in connection with the Transactions, if the subject matter of such communication or the failure of such party to obtain such consent could be material to the Company, the New EP Surviving LLC or Parent, (ii) any actions, suits, claims, investigations or proceedings commenced or, to such party s knowledge, threatened against, relating to or involving or otherwise affecting such party or any of its Subsidiaries which relate to the Transactions, (iii) the discovery of any fact or circumstance that, or the occurrence or non-occurrence of any event the occurrence or non-occurrence of which, would result in the failure to satisfy any of the conditions to Closing in Article VI (but only to the extent that a person identified on Section 8.11(a) of the Company Disclosure Schedule or Section 8.11(a) of the Parent Disclosure Schedule, as applicable, has actual knowledge of such fact or circumstance or the occurrence or non-occurrence of such event) and (iv) any material failure of such party to comply with or satisfy any covenant or agreement to be complied with or satisfied by it hereunder which would result in the failure to satisfy any of the conditions to Closing in Article VI (but only to the extent that a person identified on Section 8.11(a) of the Company Disclosure Schedule or Section 8.11(b) of the Parent Disclosure Schedule, as applicable, has actual knowledge of such material failure).

SECTION 5.8. Indemnification and Insurance.

(a) For purposes of this Section 5.8, (i) Indemnified Person shall mean any person who is now, or has been or becomes at any time prior to the Second Effective Time, an officer or director of the Company or any of its Subsidiaries, in such capacity, and also with respect to any such Person, in their capacity as a director, officer, member, trustee or fiduciary of another corporation, foundation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise (whether or not such other entity or enterprise is affiliated with the Company) serving at the request of or on behalf of the Company or any Company Subsidiary and together with such Person s heirs, executor or administrators and (ii) Proceeding shall mean any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative, investigative or otherwise and whether or not such claim, action, suit, proceeding or investigation results in a formal civil or criminal litigation or regulatory action.

(b) From and after the Second Effective Time, Parent and the New EP Surviving Corporation jointly and severally shall (i) indemnify and hold harmless against any cost or expenses (including attorneys fees), judgments, fines, losses, claims, damages or liabilities and amounts paid in settlement in connection with any Proceeding, and provide advancement of expenses to, all Indemnified Persons to the fullest extent permitted under applicable Law and (ii) honor the provisions regarding elimination of liability of directors, indemnification of officers, directors and employees and advancement of expenses contained in the Company Charter Documents

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and comparable governing instruments of any Subsidiary of the Company immediately prior to the Second Effective Time and ensure that the certificate of incorporation and by-laws of the New EP Surviving Corporation shall, for a period of six (6) years following the Second Effective Time, contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors, officers, employees and agents of the Company and its Subsidiaries than are presently set forth in the Company Charter Documents. Any right of indemnification of an Indemnified Person pursuant to this Section 5.8(b) shall not be amended, repealed or otherwise modified at any time in a manner that would adversely affect the rights of such Indemnified Person as provided herein.

(c) Parent shall cause the New EP Surviving Corporation to, and the New EP Surviving Corporation shall, maintain in effect for six (6) years from the Second Effective Time the Company s current directors and officers liability insurance policies covering acts or omissions occurring at or prior to the Second Effective Time with respect to Indemnified Persons (provided that the New EP Surviving Corporation may substitute therefor policies with reputable carriers of at least the same coverage containing terms and conditions that are no less favorable to the Indemnified Persons); provided, however, that in no event shall the New EP Surviving Corporation be required to expend pursuant to this Section 5.8(c) more than an amount per year equal to 300% of current annual premiums paid by the Company for such insurance (the Maximum Amount). In the event that, but for the proviso to the immediately preceding sentence, the New EP Surviving Corporation would be required to expend more than the Maximum Amount, the New EP Surviving Corporation shall obtain as much comparable insurance as available for the Maximum Amount. If the Company in its sole discretion elects, then the Company may, prior to the Second Effective Time, purchase a tail policy with respect to acts or omissions occurring or alleged to have occurred prior to the Second Effective Time that were committed or alleged to have been committed by such Indemnified Persons in their capacity as such; provided that in no event shall the cost of such policy exceed six (6) times the Maximum Amount and, if such a tail policy is purchased, Parent and the New EP Surviving Corporation shall have no further obligations under this Section 5.8(c).

(d) The rights of any Indemnified Person under this Section 5.8 shall be in addition to any other rights such Indemnified Person may have under the New EP Surviving Corporation Certificate, the New EP Surviving Corporation By-Laws, the DGCL or the DLLCA. The provisions of this Section 5.8 shall survive the consummation of the Transactions for a period of six (6) years and are expressly intended to benefit each of the Indemnified Persons and their respective heirs and representatives; provided, however, that in the event that any claim or claims for indemnification set forth in Section 5.8 are asserted or made within such six (6) year period, all rights to indemnification in respect of any such claim or claims shall continue until disposition of any and all such claims. If Parent and/or New EP Surviving Corporation, or any of their respective successors or assigns (i) consolidates with or merges into any other Person, or (ii) transfers or conveys all or substantially all of their businesses or assets to any other Person, then, in each such case, to the extent necessary, a proper provision shall be made so that the successors and assigns of Parent and/or New EP Surviving Corporation, as the case may be, shall assume the obligations of Parent and New EP Surviving Corporation set forth in this Section 5.8.

SECTION 5.9. Securityholder Litigation. The Company shall give Parent the opportunity to participate in the defense or settlement of any securityholder litigation against the Company and/or its directors relating to the Transactions, and no such settlement shall be agreed to without Parent s prior consent, such consent not to be unreasonably withheld or delayed.

SECTION 5.10. Fees and Expenses. All fees and expenses incurred in connection with the Transactions including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective party incurring such fees and expenses, except (a) Parent and the Company shall each bear and pay one-half of the expenses incurred in connection with the filing, printing and mailing of the Form S-4 and Joint Proxy/Information Statement and (b) as provided in Section 7.3. Notwithstanding anything to the contrary contained herein, Parent shall be responsible for and shall pay the amount of any (i) documentary, sales, use, real property transfer, real

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property gains, registration, value-added, transfer, stamp, recording and other similar Taxes (Transfer Taxes) imposed on Parent, the Company or any of its Subsidiaries in connection with this Agreement and the transactions contemplated hereby, and (ii) any Transfer Taxes imposed on the stockholders of the Company and New EP in connection with this Agreement and the transactions contemplated hereby in respect of assets that are owned directly or indirectly by the Company or any of its Subsidiaries.

SECTION 5.11. Reorganizations Treatment. The Company, New EP, Merger Sub One, Parent, Merger Sub Two and Merger Sub Three shall execute and deliver to Wachtell, Lipton, Rosen & Katz, counsel to the Company, certificates substantially in the forms attached hereto at Exhibits C and D at such time or times as reasonably requested by such law firm in connection with its delivery of the tax opinion referred to in Section 6.1(e). Prior to the Second Effective Time, none of the Company, New EP, Merger Sub One, Parent, Merger Sub Two or Merger Sub Three shall take or cause to be taken any action which would cause to be untrue any of the representations in such certificates. Each of the Company, New EP, Merger Sub One, Parent, Merger Sub Two and Merger Sub Three agree that the value of the Per Share Warrant Consideration as of the business day immediately prior to the date of this Agreement would have been $0.96 (the Per Share Warrant Consideration Value), including for purposes of applying Treasury Regulation Section 1.368-1T(e)(2)(iv).

SECTION 5.12. Rule 16b-3. Prior to the Second Effective Time, the Company and Parent shall take such steps as may be reasonably necessary or advisable to cause dispositions of Company equity securities (including derivative securities) pursuant to the Transactions by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act in accordance with that certain No-Action Letter dated January 12, 1999 issued by the SEC regarding such matters.

SECTION 5.13. Employee Benefits.

(a) From and after the Second Effective Time, Parent shall honor all Company Benefit Plans and compensation arrangements and agreements in accordance with their terms as in effect immediately before the Second Effective Time, provided that nothing herein shall limit the right of the Company or Parent or any of their respective Affiliates from amending or terminating such plans, arrangements and agreements to the extent permitted by their terms. For a period of one (1) year following the Second Effective Time (the Continuation Period), Parent shall provide, or shall cause to be provided, (i) to each employee of the Company or any of its Subsidiaries as of immediately prior to the Second Effective Time (the Company Employees), other than any such Company Employee covered by a Company Collective Bargaining Agreement, for so long as such Company Employee remains an employee of the Parent, the New EP Surviving Corporation or any of their respective Affiliates during the Continuation Period, base salary and annual bonus opportunities each of which is no less than that provided to such Company Employee immediately before the Second Effective Time, (ii) to each Company Employee, other than any such Company Employee covered by a Collective Bargaining Agreement or who is not a full-time employee, for so long as such Company Employee remains an employee of Parent, the Surviving Company or any of their respective Affiliates during the Continuation Period, compensation opportunities (other than annual bonus opportunities) and benefits eligibility which are the same as those provided to similarly situated employees of Parent and its Subsidiaries; provided, that notwithstanding anything to the contrary contained in this Section 5.13(a)(ii), during the Continuation Period, Parent shall provide, or shall cause to be provided to Company Employees and their eligible dependents who are receiving medical care or treatment under the Company s Select Plus Program (the SPP) and any additional participants who are receiving medical care or treatment under the SPP, in each case immediately prior to the Second Effective Time (and in the case of each Company Employee and his or her eligible dependents,, for so long as such Company Employee remains an employee of the Parent, the Surviving Company or any of their respective Affiliates during the Continuation Period), continued medical care and treatment under the terms of the SPP in effect immediately prior to the Second Effective Time.

(b) Notwithstanding anything to the contrary contained in Section 5.13(a), during the Continuation Period (or such longer period as may be required under any Company Benefit Plan as of the date of this Agreement),

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Parent shall provide to each Company Employee, other than any such Company Employee covered by a Collective Bargaining Agreement, whose employment terminates during such period with such severance pay and benefits that would have been provided to such Company Employee under the applicable severance pay plan maintained by the Company as in effect immediately prior to the Second Effective Time. In addition, to the extent any portion of the Company s assets are sold during the Continuation Period, Parent will use its commercially reasonable efforts to ensure that the purchaser of such assets provides the foregoing benefits to the applicable employees who will be employees of the purchaser of such assets through the end of the Continuation Period.

(c) Without limiting the generality of the foregoing, the Company, Parent, New EP, and their respective Subsidiaries and controlled Affiliates, as applicable, will take all actions necessary to effectuate the provisions of Section 5.13(c) of the Company Disclosure Schedule.

(d) Without limiting the generality of the foregoing, the Company, Parent, New EP, and their respective Subsidiaries and controlled Affiliates, as applicable, will take all actions necessary to effectuate the provisions of Section 5.13(d) of the Company Disclosure Schedule.

(e) For all purposes (including purposes of vesting, eligibility to participate and level of benefits) under the employee benefit plans of Parent and its Subsidiaries providing benefits to any Company Employees after the Second Effective Time as required pursuant to this Section 5.13(e) (the New Plans), each Company Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Second Effective Time, to the same extent as such Company Employee was entitled, before the Second Effective Time, to credit for such service under any similar Company Benefit Plan in which such Company Employee participated or was eligible to participate immediately prior to the Second Effective Time, provided that the foregoing shall not apply with respect to benefit accrual under any defined benefit pension plan or to the extent that its application would result in a duplication of benefits. In addition, and without limiting the generality of the foregoing, (i) each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is comparable to a Company Benefit Plan in which such Company Employee participated immediately before the consummation of the Transactions (such plans, collectively, the Old Plans), and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, Parent shall cause all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such employee and his or her covered dependents, unless such conditions would not have been waived under the comparable plans of the Company or its Subsidiaries in which such employee participated immediately prior to the Second Effective Time, and Parent shall cause any eligible expenses incurred by such employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date such employee s participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(f) Section 280G.

(i) Following the date of this Agreement, but in no event later than November 15, 2011, the Company shall provide to Parent the name of each director, officer, employee and service provider entitled to a gross-up, make whole or other payment as a result of the imposition of taxes under Section 4999 of the Code pursuant to any agreement or arrangement with the Company or any of its Subsidiaries. The Company shall, as soon as reasonably practicable after request from Parent, provide Parent with information necessary for Parent (or its advisor) to calculate the estimated dollar amount (if any) of such gross-up, make whole or other payment payable to each such individual in connection with the consummation of the Transactions.

(ii) Following the date of this Agreement, the Company shall consult with Parent as to, and shall reasonably consider taking, actions which may be reasonably requested by Parent, on or prior to December 31, 2011, to

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reduce and/or avoid the application of Section 280G of the Code to the payments, if any, to be made to those individuals disclosed to Parent pursuant to Section 5.13(f)(i) of this Agreement (which actions may include, for example, accelerating the vesting or payment of equity awards or accelerating the payment of 2011 bonuses).

(g) Without limiting the generality of Section 8.6, no provision of this Section 5.13 shall be construed to create any third party beneficiary rights in any employee, officer, current or former director or consultant of the Company or its Subsidiaries, or any beneficiary of such employee, officer, director or consultant under a Company Benefit Plan, Parent Benefit Plan or otherwise.

SECTION 5.14. Debt Financing.

(a) Each of Parent, Merger Sub Two and Merger Sub Three shall use best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to arrange the Debt Financing on the terms and conditions described in the Debt Commitment Letters, including using best efforts (i) to negotiate and enter into the definitive agreements with respect thereto on the terms and conditions contained in the Debt Commitment Letters (including, as necessary, the flex provisions contained in any related fee letter) by a date no later than the date that is three months from the date hereof and (ii) to satisfy (or if determined advisable by Parent, Merger Sub Two and Merger Sub Three, obtain the waiver of) on a timely basis all conditions to obtaining the Debt Financing within Parent s, Merger Sub Two s and Merger Sub Three s control and to comply with all of its obligations pursuant to the Debt Commitment Letters and the definitive agreements related thereto. In the event that all conditions to funding the commitments contained in the Debt Commitment Letters have been satisfied, each of Parent, Merger Sub Two and Merger Sub Three shall use its best efforts to cause the Financing Sources to fund the Debt Financing required to consummate the transactions contemplated by this Agreement and to pay related fees and expenses on the Closing Date (including by taking enforcement action to cause the Financing Sources to provide the Debt Financing). Each of Parent, Merger Sub Two and Merger Sub Three shall use its best efforts to enforce all of its rights under the Debt Commitment Letters. Parent, Merger Sub Two and Merger Sub Three shall give Seller prompt notice of any material breach by any party to the Debt Commitment Letters or the definitive agreements related thereto of which Parent, Merger Sub Two or Merger Sub Three has become aware or any termination of any of the Commitment Letters or such definitive agreements. In the event that any portion of the Debt Financing becomes unavailable, Parent, Merger Sub Two and Merger Sub Three shall (1) use their best efforts to obtain, as promptly as practicable following the occurrence of such event, alternative debt financing for any such portion from alternative debt sources (Alternative Financing) in an amount that will still enable Parent, Merger Sub Two and Merger Sub Three to consummate the Transactions and (2) promptly notify the Company of such unavailability and the reason therefor. If obtained, Parent shall deliver to the Company true and complete copies of all agreements (other than any fee letters and engagement letters) pursuant to which any such alternative source shall have committed to provide Parent or the New EP Surviving Corporation with Alternative Financing. Parent, Merger Sub Two and Merger Sub Three shall not, without the Company s prior written consent (not to be unreasonably withheld) permit any amendment or modification to, or any waiver of any provision or remedy under, any Debt Commitment Letter or any definitive agreements related thereto unless the terms of such Debt Commitment Letter or definitive agreements related thereto, in each case as so amended, modified or waived, are substantially similar to those in such Debt Commitment Letter or definitive agreement related thereto, prior to giving effect to such amendment, modification or waiver (other than economic terms, which shall as good as or better for Parent, Merger Sub Two and Merger Sub Three than those in the Debt Commitment Letter or definitive agreement relating thereto prior to giving effect to such amendment, modification or waiver). Parent, Merger Sub Two and Merger Sub Three shall provide the Company with prompt written notice of the receipt of any notice or other communication from any financing source with respect to such financing source s failure or anticipated failure to fund its commitments under any Debt Commitment Letters or definitive agreement in connection therewith. Parent, Merger Sub Two and Merger Sub Three shall keep the Company reasonably informed on a reasonably current basis of the status of its efforts to consummate the Debt Financing.

(b) The Company shall provide, shall cause its Subsidiaries to provide and shall use its best efforts to cause its and their Representatives to provide such cooperation in connection with the marketing, arrangement and

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consummation of and satisfaction of the conditions to the Debt Financing as may be reasonably requested by Parent (provided, that such requested cooperation does not materially and adversely interfere with the ongoing business operations of the Company and its Subsidiaries (it being understood that none of the actions listed in clauses (i) through (viii) below shall be deemed to materially and adversely interfere with the ongoing business operations of the Company and its Subsidiaries)), including but not limited to: (i) participation in meetings, drafting sessions, presentations, road shows and due diligence and other sessions with the Financing Sources and lenders, investors and rating agencies; (ii) furnishing Parent and the Financing Sources and their representatives as promptly as practicable with financial and other pertinent information regarding the Company and its Subsidiaries required, or reasonably requested by Parent, to consummate the Debt Financing, including (A) all information to be included in a customary bank information memorandum; (B) all of the information and data related to the Company and its Subsidiaries necessary (and at the times required) to satisfy the condition set forth in paragraph 3 of Exhibit D of the Debt Commitment Letters (or the substantially similar provision thereto in any Replacement Debt Commitment Letters or Debt Commitment Letters relating to an Alternative Financing) (information and data required to be delivered pursuant to this clause (ii) being referred to as the Required Information); (iii) assisting Parent, the Financing Sources and their representatives in the preparation of customary documents and materials, including but not limited to (A) any offering documents, private placement memoranda, bank information memoranda (including a bank information memorandum that does not include material non-public information), prospectuses and other informational and marketing materials and documents for any portion of the Debt Financing and (B) materials for rating agency presentations; (iv) reasonably cooperating with the marketing efforts of Parent and the Financing Sources for any portion of the Debt Financing; (v) executing and delivering (and assisting in the negotiation of) any pledge or security documents and otherwise facilitating the granting of a security interest (and perfection thereof) in collateral and executing and delivering (and assisting in the negotiation of) definitive financing documents, guarantees, mortgages, underwriting and purchase agreements, indentures or other documents or customary certificates contemplated by the Debt Commitment Letters or as reasonably requested by Parent; provided that no pledge or security document, definitive financing document or any other such document or certificate to which the Company or any of its Subsidiaries is a party shall be effective prior to the Second Effective Time; (vi) using best efforts to obtain customary authorization letters with respect to the bank information memoranda and consents of accountants for use of their reports in any materials relating to the Debt Financing, accountants comfort letters and legal opinions as reasonably requested by Parent; and (viii) taking all corporate actions, subject to the occurrence of the Closing, necessary to permit the consummation of the Debt Financing. The foregoing notwithstanding, (I) none of the Company or any of its Subsidiaries nor any of their Representatives shall be required to pay any commitment or other fee or incur any other cost or expense that is not promptly reimbursed by Parent, Merger Sub Two or Merger Sub Three in connection with the Debt Financing prior to the Second Effective Time and (II) no obligation of or security interest granted by the Company, any of its Subsidiaries or any of its or their Representatives undertaken in connection with the Debt Financing shall be effective until the Second Effective Time. In addition, the Company agrees that it will use best efforts to supplement the Required Information to the extent that any such Required Information, to the knowledge of the Company, contains any material misstatement of fact or omits to state any material fact necessary to make such information, taken as a whole, not misleading in any material respect promptly after becoming aware thereof. All non-public or otherwise confidential information regarding the Company or its Subsidiaries obtained by Parent, Merger Sub Two or Merger Sub Three or their respective Representatives pursuant to this Section 5.14(b) shall be kept confidential in accordance with the Confidentiality Agreement; provided that Parent, Merger Sub Two and Merger Sub Three shall be permitted to disclose such information to rating agencies and prospective lenders and investors during syndication of the debt financing contemplated by the Debt Commitment Letters, subject to customary confidentiality undertakings as applicable. The Company hereby consents to the use of its and its Subsidiaries logos in connection with the Debt Financing; provided, that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries. Parent (x) shall, promptly upon request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs (including reasonable and documented attorney s fees) incurred by the Company or any of its Subsidiaries in connection with any cooperation pursuant to Section 5.14, (y) acknowledges and agrees that the Company, its Subsidiaries and their

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respective Representatives shall not have any responsibility for, or incur any liability to any person under, the Debt Financing (other than obligations pursuant to the definitive agreements relating to the Debt Financing, effective as of and from the Second Effective Time, as and to the extent such Persons are party to such documents) and (z) shall indemnify and hold harmless the Company, its Subsidiaries and their respective Representatives from and against any and all losses, damages, claims, costs or expenses suffered or incurred by them in connection with the arrangement of the Debt Financing, any action taken by them at the request of Parent, Merger Sub Two or Merger Sub Three pursuant to Section 5.14 and any information (other than information furnished by or on behalf of the Company and its Subsidiaries) utilized in connection therewith, in each case, other than to the extent any of the foregoing arise from the bad faith, gross negligence or willful misconduct of, or breach of this Agreement by, the Company, any of its Subsidiaries or their respective affiliates and Representatives.

(c) Notwithstanding anything herein to the contrary, the Parent, in its sole discretion, may replace any existing Debt Commitment Letter with a debt commitment letter (a Replacement Debt Commitment Letter) pursuant to which financial institutions selected by it in its sole discretion commit to provide debt financing to finance the Transactions (Replacement Debt Financing) and on or following the effectiveness thereof the Parent may, in its sole discretion terminate the existing Debt Commitment Letter and the commitments thereunder; provided that, without the Company s consent (such consent not to be unreasonably withheld), the terms of such Replacement Debt Financing shall be substantially similar to the terms of the Debt Commitment Letter or definitive agreement relating thereto being replaced (other than economic terms, which shall be as good as or better for Parent and Merger Sub than those in the Debt Commitment Letter or definitive agreement relating thereto being replaced). Promptly following the execution of a Replacement Debt Commitment Letter by Parent, Parent shall notify the Company to such effect and shall promptly provide a fully executed copy of such Replacement Debt Commitment Letter and any related agreements (other than any fee letters or engagement letters). Such notice shall also satisfy the Parent s notification requirements under Section 5.14(a) relating to termination of the existing Debt Commitment Letter.

(d) The Company shall use its best efforts to deliver to Parent on or prior to the second business day prior to the Second Effective Time, a fully executed copy of a payoff letter, in customary form, from the Administrative Agent (as defined in the Existing EP Credit Agreement), which payoff letter shall (i) indicate the total amount required to be paid to fully satisfy all principal, interest, prepayment premiums, penalties, breakage costs or similar obligations related to any Obligations (as defined in the Existing EP Credit Agreement) as of the anticipated Closing Date (and the daily accrual thereafter) (the Payoff Amount) (ii) state that upon receipt of the Payoff Amount, the Existing EP Credit Agreement and related instruments evidencing the Existing EP Credit Agreement shall be terminated and any stock certificates and other physical collateral held by the Collateral Agent (as defined in the Existing EP Credit Agreement) shall be returned, and (iii) state that all Liens and all guarantees in connection therewith relating to the assets and properties of the Company or any of its Subsidiaries securing such Obligations shall be, upon the payment of the Payoff Amount on the Closing Date, released and terminated. The Company shall, and shall cause its Subsidiaries to, use best efforts to deliver all notices and take all other actions, including assistance with respect to the backstop, replacement or termination of any letters of credit issued under the Existing EP Credit Agreement, to facilitate the termination of commitments under the Existing EP Credit Agreement, the repayment in full of all Obligations then outstanding thereunder (using funds arranged by Parent, Merger Sub Two or Merger Sub Three) and the release of all Liens and termination of all guarantees in connection therewith on the Closing Date (such termination, repayment and release, the Credit Facility Termination); provided that in no event shall this Section 5.14(d) require the Company or any of its Subsidiaries to (x) deliver an irrevocable notice of termination or prepayment of any credit facility, (y) cash collateralize any letters of credit or (z) cause such Credit Facility Termination unless the Closing shall occur substantially concurrently and the Company or its Subsidiaries have received funds from Parent to pay in full the Payoff Amount. To the extent the Company or its Subsidiaries do not obtain the any amendment or waiver contemplated in Section 5.14(e) below, either (i) the provisions of this Section 5.14(d) relating to the Existing EP Credit Agreement shall apply to the applicable Waiver Credit Agreement or (ii) the Company and its Subsidiaries shall, at the request of Parent, and at Parent s expense, use their best efforts to refinance the credit

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facilities set forth in the applicable Waiver Credit Agreement, effective upon the Second Effective Time on terms that permit the Transactions and are reasonably acceptable to the Parent (and such refinancing shall not be subject to the refinancing restriction set forth in Section 5.2(b)(i)).

(e) The Company shall use its best efforts to assist Parent in obtaining, at Parent s expense, as soon as possible after the date of this Agreement and in any event on or prior to the forty-fifth (45th) business day prior to the Second Effective Time, a fully executed copy of an amendment or waiver of each of the Waiver Credit Agreements which amends or waives the change of control provisions set forth therein to permit the Transactions, such amendment or waiver to be effective at or prior to the Second Effective Time.

(f) The Company shall, on a weekly basis, give Parent updates on the balances outstanding under the Existing EP Credit Agreement and E&P BNP Paribas Credit Agreement.

(g) The Company shall be permitted, at the Company s expense, to seek and to obtain consent of the lenders under the indebtedness set forth on Section 5.14(g) of the Company Disclosure Schedule to permit the closing of the First Merger.

SECTION 5.15. Parent Board of Directors. Parent agrees to (i) take all action necessary (including increasing the number of directors that constitute the Parent Board and amending the Shareholders Agreement, dated as of February 10, 2011, among Parent and the persons set forth on the signature page to such agreement (the Parent Shareholders Agreement) to effect such increase) to elect two (2) individuals designated by the Company to Parent s Board of Directors (one of which shall be appointed to Parent s Audit Committee and one of which shall be appointed to Parent s Governance Committee), effective as of, and subject to the occurrence of, the Second Effective Time and (ii) cause its by-laws to be amended to amend the definition of Supermajority Board Vote to change the reference to eight (8) directors in the first line thereof to ten (10) directors.

SECTION 5.16. Sale of Upstream Assets. The Company shall, and shall cause its controlled Subsidiaries to, reasonably assist Parent in the preparation for the sale of certain or all of the Company s Upstream Assets, it being understood that it is the desire and intent of the parties to, if reasonably practicable, consummate the sale of such Upstream Assets immediately prior to the Closing. As may be reasonably requested by Parent, the Company shall, and shall cause its controlled Subsidiaries to, enter into one or more agreement(s) with third parties to facilitate the sale of any Upstream Assets identified by Parent (such agreements to contain customary covenants and other terms and conditions for transactions of such size and nature); provided, however, that (i) the consummation of the transactions provided for in any such agreement for a sale of Upstream Assets (an Upstream Sale Agreement) shall be conditioned upon the Closing or satisfaction of all of the conditions to Closing in a case where the Closing will occur immediately following the sale of the Upstream Assets and on Parent being and irrevocably confirming that it is ready, willing and able to consummate the Closing, and it and its Financing Source have irrevocably committed to, effect the Closing immediately following the sale of Upstream Assets and (ii) Parent shall indemnify for and hold the Company and its Subsidiaries harmless from any and all costs, expenses (including interest, court and other legal proceeding costs, fees of attorneys, accountants and other experts or other expenses of litigation or other proceedings), losses, damages, fines, penalties, Taxes, and liabilities incurred by the Company or its Subsidiaries arising from or relating to such Upstream Sale Agreement. For the avoidance of doubt, but without prejudice to Section 6.2(b), in no event shall the entering into of an agreement or the consummation of any sale of any Upstream Assets, in and of itself, by Parent, Merger Sub Two, Merger Sub Three, the Company, New EP or Merger Sub One be a condition to any of Parent s, Merger Sub Two s or Merger Sub Three s obligations under this Agreement.

SECTION 5.17. Employee Information and Consultation. The Company, its Subsidiaries and each of its and their Affiliates, as applicable, shall inform and/or consult with, as applicable, all labor unions, labor organizations, works councils and other employee representative bodies with respect to the terms of any Company Collective Bargaining Agreement or applicable Laws in connection with this Agreement and the

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transactions, and shall take all other necessary actions in connection with employees covered thereby as may be required pursuant to applicable Laws.

SECTION 5.18. Listing. Parent shall use its reasonable best efforts to cause the shares of Parent Class P Stock and the Parent Class P Warrants to be issued pursuant to and in accordance with this Agreement (including the Parent Class P Stock issuable upon exercise of the Parent Class P Warrants) to be approved for listing (subject, if applicable, to notice of issuance) for trading on the NYSE prior to the Closing; provided, that if the NYSE will not approve the listing of the Parent Class P Warrants on the NYSE, then Parent shall use its reasonable best efforts to cause such Parent Class P Warrants to be approved for listing (subject, if applicable, to notice of issuance) on either (x) NASDAQ or (y) such other exchange(s), electronic trading networks or other suitable trading platforms as are reasonably agreed to by Parent and the Company.

SECTION 5.19. Approvals. Other than the Parent Stockholder Approval and Company Stockholder Approval, each of Parent, Merger Sub Two, Merger Sub Three, the Company, Merger Sub One and New EP agree to obtain all requisite board of director approval(s), stockholder approval(s) and member approval(s), to the extent not already obtained prior to the date of this Agreement, required to be obtained to consummate the First Merger, Second Merger, Third Merger and LLC Conversion.

ARTICLE VI

Conditions Precedent

SECTION 6.1. Conditions to Each Party s Obligation to Effect the Transactions. The respective obligations of each party hereto to effect the Second Merger shall be subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Company Stockholder Approval. The Company Stockholder Approval shall have been obtained in accordance with applicable Law and the certificate of incorporation and by-laws of the Company;

(b) Regulatory Approval. Any waiting period applicable to the Transactions under the HSR Act shall have been terminated or shall have expired;

(c) No Injunctions or Restraints. No Law, injunction, judgment or ruling enacted, promulgated, issued, entered, amended or enforced by any Governmental Authority (collectively, Restraints) shall be in effect enjoining, restraining, preventing or prohibiting consummation of the Transactions or making the consummation of the Transactions illegal;

(d) Form S-4. The Form S-4 shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Form S-4 shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC; and

(e) Tax Opinion. The Company shall have received from Wachtell, Lipton, Rosen & Katz, tax counsel to the Company, (i) at the First Effective Time, a written opinion dated as of the date of the First Merger to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion, the First Merger and the LLC Conversion, taken together, will qualify for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code, and (ii) a written opinion dated as of the Closing Date to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion, the Second Merger and the Third Merger, taken together, will qualify for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinions, Wachtell, Lipton, Rosen & Katz may rely upon representations and covenants contained in the

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certificates of the Company, New EP, Parent, Merger Sub One, Merger Sub Two and Merger Sub Three referred to in Section 5.11 and upon representations that Wachtell, Lipton, Rosen & Katz reasonably deems relevant.

SECTION 6.2. Conditions to Obligations of Parent, Merger Sub Two and Merger Sub Three. The obligations of Parent, Merger Sub Two and Merger Sub Three to effect the Second Merger are further subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of the Company contained in Section 3.6(a), Section 3.6(b) and Section 3.10(b), shall be true and correct in all respects, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (ii) the representations and warranties of the Company contained in Section 3.3(a) and Section 3.3(d), shall be true and correct in all respects, other than as would not materially delay or prevent the Closing, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (iii) the representations and warranties of the Company contained in Section 3.2(a) shall be true and correct in all respects, other than immaterial misstatements or omissions, both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and (iv) all other representations and warranties of the Company set forth herein shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except, in the case of this clause (iv), where the failure of such representations and warranties to not be so true and correct (without giving effect to any limitation as to materiality or Company Material Adverse Effect set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company to such effect.

(b) Performance of Obligations of the Company. The Company, New EP and Merger Sub One shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company to such effect.

(c) (A) The Company shall deliver to Parent, no earlier than thirty (30) days prior to the Closing Date and no later than ten (10) days prior to the Closing Date, a certification from an authorized officer of the Company setting forth the Company s then current good faith estimate of the Company s net operating loss carryforwards for federal income tax purposes as of January 1, 2012, computed in the manner, and taking into account the assumptions, set forth in clauses (i) and (iii) of the representation contained in Section 3.10(c) (such estimate, the Closing Estimated NOL), and (B) there shall not have been an NOL MAE in respect of the Closing Estimated NOL as compared to the Signing Estimated NOL.

For purposes of this Agreement, an NOL MAE shall mean a reduction in the Company s good faith estimate of the Company s net operating loss carryforwards for federal income tax purposes as of January 1, 2012 to an amount less than $2,600,000,000, without taking into account any such reduction (i) resulting from a change in the relevant Tax law as in effect as of the date of this Agreement, (ii) resulting from an increase of the taxable income of the Company (before giving effect to any deduction of net operating loss carryforwards and any bonus depreciation deductions) for the year ending December 31, 2011 in excess of the amount set forth on Section 3.10(c) of the Company Disclosure Schedule, or (iii) to the extent that such reduction gives rise to a current deduction in the next succeeding taxable year after the taxable year ending December 31, 2011.

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SECTION 6.3. Conditions to Obligation of the Company, New EP and Merger Sub One. The obligation of the Company, New EP and Merger Sub One to effect the Second Merger is further subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of Parent contained in Section 4.6(a) and Section 4.6(b) shall be true and correct in all respects, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (ii) the representations and warranties of Parent contained in Section 4.3(a) and Section 4.3(d) shall be true and correct in all respects, other than as would not materially delay or prevent the Closing, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (iii) the representations and warranties of Parent contained in Section 4.2(a) shall be true and correct in all respects, other than immaterial misstatements or omissions, both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and (iv) all other representations and warranties of Parent set forth herein shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except, in the case of this clause (iv), where the failure of such representations and warranties to not be so true and correct (without giving effect to any limitation as to materiality or Parent Material Adverse Effect set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. The Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent to such effect.

(b) Performance of Obligations of Parent, Merger Sub Two and Merger Sub Three. Parent, Merger Sub Two and Merger Sub Three shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent to such effect.

(c) Parent Stockholder Approval. The Parent Stockholder Approval shall have been obtained in accordance with the requirements of the NYSE.

(d) Stock and Warrant Listing. (i) The shares of Parent Class P Stock deliverable to the stockholders of the Company as contemplated by this Agreement shall have been approved for listing on the NYSE, subject to official notice of issuance and (ii) the Parent Class P Warrants deliverable to the stockholders of the Company as contemplated by this Agreement shall have been approved for listing (subject, if applicable, to notice of issuance) on either (x) the NYSE, (y) NASDAQ or (z) such other exchange(s), electronic trading networks or other suitable trading platforms as are reasonably agreed to by Parent and the Company.

SECTION 6.4. Frustration of Closing Conditions. None of the Company, Parent, New EP, Merger Sub One, Merger Sub Two or Merger Sub Three may rely on the failure of any condition set forth in Section 6.1, 6.2 or 6.3, as the case may be, to be satisfied if such failure was caused by such party s failure to use its best efforts to consummate the Second Merger and the other Transactions, as required by and subject to Section 5.4.

ARTICLE VII

Termination

SECTION 7.1. Termination. This Agreement may be terminated and the Transactions abandoned at any time prior to the Second Effective Time:

(a) by the mutual written consent of the Company and Parent duly authorized by each of their respective Boards of Directors.

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(b) by either of the Company or Parent:

(i) if the Second Merger shall not have been consummated on or before June 30, 2012 (the Walk-Away Date); provided, however, that if, as of such date, the condition set forth in Section 6.1(b) or Section 6.1(c) shall not have been satisfied or duly waived by all parties entitled to the benefit of such condition, either the Company or Parent may, by written notice delivered to the other party, elect to extend the Walk-Away Date to December 31, 2012 (the Extended Walk-Away Date); provided, further, that the right to terminate this Agreement under this Section 7.1(b)(i) shall not be available (x) to a party if the inability to satisfy such condition was due to the failure of such party to perform any of its obligations under this Agreement or (y) to a party if the other party has filed (and is then pursuing) an action seeking specific performance as permitted by Section 8.8 or (z) to the Company if Parent or Merger Sub is pursuing an action in good faith to enforce, including against anticipatory breach, the obligations of the lenders to fund the Debt Financing under the Debt Commitment Letters or the definitive documents relating to the Debt Financing.

(ii) if any Restraint having the effect set forth in Section 6.1(c) shall be in effect and shall have become final and nonappealable; provided, however, that the right to terminate this Agreement under this Section 7.1(b)(ii) shall not be available to a party if such Restraint was due to the failure of such party to perform any of its obligations under this Agreement; or

(iii) if the Company Stockholders Meeting shall have concluded and the Company Stockholder Approval shall not have been obtained.

(c) by Parent:

(i) if an Adverse Recommendation Change shall have occurred;

(ii) prior to the receipt of the Company Stockholder Approval, if the Company shall be in Willful Breach of its obligations pursuant to the first two sentences of Section 5.1(b) or Section 5.3(a) through Section 5.3(d), other than in the case where (w) such Willful Breach is a result of an isolated action by a Person that is a Representative of the Company (other than a director or officer of the Company), (x) such Willful Breach was not caused by, or within the Knowledge of, the Company, (y) the Company takes appropriate actions to remedy such Willful Breach upon discovery thereof and (z) Parent is not significantly harmed as a result thereof; or

(iii) if the Company shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement (or if any of the representations or warranties of the Company set forth in this Agreement shall fail to be true), which breach or failure (A) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in Section 6.2(a) or (b) and (B) is incapable of being cured, or is not cured, by the Company within thirty (30) days following receipt of written notice from Parent of such breach or failure; provided, that Parent shall not have the right to terminate this Agreement pursuant to this Section 7.1(c)(iii) if Parent is then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement.

(d) by the Company:

(i) prior to the receipt of the Parent Stockholder Approval, if Parent shall be in Willful Breach of its obligations pursuant to Section 5.1(c);

(ii) if Parent shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement (or if any of the representations or warranties of Parent set forth in this Agreement shall fail to be true), which breach or failure (A) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in Section 6.3(a) or (b) and (B) is incapable of being cured, or is not cured, by Parent within thirty (30) days following receipt of written notice from the Company of such breach or failure; provided, that the Company shall not have the right to

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terminate this Agreement pursuant to this Section 7.1(d)(ii) if the Company is then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement; or

(iii) at any time prior to the time the Company Stockholder Approval is obtained, if (i) the Company Board authorizes the Company, subject to complying with the terms of this Agreement, including Section 5.3, to enter into one or more Acquisition Agreements with respect to a Superior Proposal, (ii) immediately prior to or concurrently with the termination of this Agreement the Company, subject to complying with the terms of this Agreement, including Section 5.3, enters into one or more Acquisition Agreements with respect to a Superior Proposal and (iii) the Company immediately prior to or concurrently with such termination pays to Parent in immediately available funds any fees required to be paid pursuant to Section 7.3.

SECTION 7.2. Effect of Termination. In the event of the termination of this Agreement as provided in Section 7.1, written notice thereof shall be given to the other party or parties, specifying the provision of this Agreement pursuant to which such termination is made, and this Agreement shall forthwith become null and void (other than the provisions of the first sentence of Section 3.19, Sections 5.8, 5.10, 7.2 and 7.3, and Article VIII, and Parent s indemnification obligations set forth in Section 5.14 and Section 5.16, all of which shall survive termination of this Agreement), and there shall be no liability on the part of Parent, Merger Sub Two, Merger Sub Three, New EP, Merger Sub One or the Company or their respective directors, officers and Affiliates, except (i) the Company and/or Parent may have liability as provided in Section 7.3, and (ii) nothing shall relieve any party hereto from any liability for any failure to consummate the Transactions when required pursuant to this Agreement (it being understood that the failure of Parent, Merger Sub Two or Merger Sub Three to receive the proceeds of the Debt Financing or of any alternative financing, or the failure to receive the Parent Stockholder Approval, shall not relieve Parent, Merger Sub Two or Merger Sub Three from any such liability) or any party from liability for fraud or a Willful Breach of any covenant or other agreement contained in this Agreement.

SECTION 7.3. Fees and Expenses.

(a) In the event that this Agreement is terminated pursuant to Section 7.1(b)(iii), then the Company shall pay to Parent on the date of such termination, (x) all documented, out of pocket expenses (including financing expenses) not to exceed $20,000,000 in the aggregate plus (y) any documented commitment, underwriting, extension, ticking, structuring, fronting, duration, upfront fees or similar fees required to be paid under the Debt Commitment Letters, any fee letters related thereto or the definitive documents relating to the Debt Financing on or prior to such termination (or notwithstanding such termination) (Parent Expenses), payable by wire transfer of same day funds.

(b) In the event that (A) a Takeover Proposal shall have been made known to the Company or shall have been made directly to its stockholders generally or any Person shall have publicly announced an intention to make a Takeover Proposal which proposal shall not have been withdrawn prior to the date of the Company Stockholder Meeting (or if the Company Stockholder Meeting shall not have occurred, prior to the termination of this Agreement pursuant to Section 7.1(b)(i)) and thereafter, (B) this Agreement is terminated by the Company or Parent pursuant to Section 7.1(b)(iii), and (C) the Company enters into a definitive agreement with respect to, or consummates a Takeover Proposal within twelve (12) months of the date this Agreement is terminated, then the Company shall pay to Parent a termination fee equal to $650,000,000 (the Termination Fee) less any amount of Parent Expenses previously paid, by wire transfer of same day funds, upon the earlier of the public announcement of the Company s entry into any such agreement or the consummation of any such transaction. For purposes of this Section 7.3(b), the term Takeover Proposal shall have meaning assigned to such term in Section 5.3(f), except that the references to 20% or more shall be deemed to be references to more than 50% .

(c) In the event this Agreement is terminated by Parent pursuant to Section 7.1(c)(i) or Section 7.1(c)(ii), then the Company shall pay to Parent, within two (2) business days after the date of termination, the Termination Fee, payable by wire transfer of same day funds.

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(d) In the event this Agreement is terminated by the Company pursuant to Section 7.1(d)(iii), then the Company shall pay to Parent, immediately prior to or concurrently with such termination, the Termination Fee, payable by wire transfer of same day funds.

(e) In the event that the Company shall fail to pay the Termination Fee and/or the Parent Expenses required pursuant to this Section 7.3 when due, such fee and/or expenses, as the case may be, shall accrue interest for the period commencing on the date such fee and/or expenses, as the case may be, became past due, at a rate equal to the legal rate of interest provided for in Section 2301 of Title 6 of the Delaware Code. In addition, if the Company shall fail to pay the Termination Fee and/or the Parent Expenses, as the case may be, when due, the Company shall also pay to Parent all of Parent s costs and expenses (including attorneys fees) in connection with efforts to collect such fee and/or expenses, as the case may be. The Company acknowledges that the provisions of this Section 7.3 are an integral part of the Transactions and that, without these agreements, Parent would not enter into this Agreement. The parties agree that in the event the Company pays the Termination Fee to Parent, the Company shall have no further liability to Parent, Merger Sub Two or Merger Sub Three and that in no event shall the Company be required to pay the Termination Fee on more than one occasion; provided, that, nothing contained herein shall relieve the Company from liability for fraud or a Willful Breach of any covenant or other agreement contained in this Agreement. The parties further agree that in the event the Company pays the Parent Expenses to Parent, the Company shall have no further liability to Parent, Merger Sub Two or Merger Sub Three except solely in those circumstances set forth in Section 7.3 when the Termination Fee is payable and then any such further liability shall be limited to an amount equal to the Termination Fee less the Parent Expenses previously paid; provided, that, nothing contained herein shall relieve the Company from liability for fraud or a Willful Breach of any covenant or other agreement contained in this Agreement.

ARTICLE VIII

Miscellaneous

SECTION 8.1. No Survival, Etc. Except as otherwise provided in this Agreement, the representations, warranties and agreements of each party hereto shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any other party hereto, any Person controlling any such party or any of their officers, directors or representatives, whether prior to or after the execution of this Agreement, and no information provided or made available shall be deemed to be disclosed in this Agreement or in the Company Disclosure Schedule, except to the extent actually set forth herein or therein. The representations, warranties and agreements in this Agreement shall terminate at the Second Effective Time or, except as otherwise provided in Section 7.2, upon the termination of this Agreement pursuant to Section 7.1, as the case may be, except that the agreements set forth in Article II and Sections 5.8 and 5.10 and any other agreement in this Agreement which contemplates performance after the Second Effective Time shall survive the Second Effective Time indefinitely and those set forth in Sections 5.10, 7.2 and 7.3 and this Article VIII shall survive termination indefinitely. The Confidentiality Agreement shall (i) survive termination of this Agreement in accordance with its terms, except to the extent that any provision therein with respect to solicitation or other public statements is superseded by the express provisions of this Agreement, and (ii) terminate as of the Second Effective Time.

SECTION 8.2. Amendment or Supplement. At any time prior to the Second Effective Time, this Agreement may be amended or supplemented in any and all respects, whether before or after receipt of the Company Stockholder Approval or Parent Stockholder Approval, by written agreement of the parties hereto, by action taken or authorized by their respective Boards of Directors; provided, however, that following approval of the Transactions by the stockholders of the Company or the stockholders of Parent, there shall be no amendment or change to the provisions of this Agreement which by Law would require further approval by the stockholders of the Company or by the stockholders of Parent without such approval.

SECTION 8.3. Extension of Time, Waiver, Etc. At any time prior to the Second Effective Time, any party may, subject to applicable Law, (a) waive any inaccuracies in the representations and warranties of any other

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party hereto, (b) extend the time for the performance of any of the obligations or acts of any other party hereto or (c) waive compliance by the other party with any of the agreements contained herein or, except as otherwise provided herein, waive any of such party s conditions. Notwithstanding the foregoing, no failure or delay by the Company, New EP, Merger Sub One, Parent, Merger Sub Two or Merger Sub Three in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

SECTION 8.4. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties without the prior written consent of the other parties, except that Merger Sub Two or Merger Sub Three may assign, in its sole discretion, any of or all its rights, interests and obligations under this Agreement to any direct, wholly owned Subsidiary of Parent, but no such assignment shall relieve Merger Sub Two or Merger Sub Three of any of its obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment not permitted under this Section shall be null and void.

SECTION 8.5. Counterparts. This Agreement may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

SECTION 8.6. Entire Agreement; No Third-Party Beneficiaries. This Agreement, the Company Disclosure Schedule, the Parent Disclosure Schedule, the Voting Agreement and the Confidentiality Agreement (a) constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter of this Agreement and thereof and (b) shall not confer upon any Person other than the parties hereto any rights (including third party beneficiary rights or otherwise) or remedies hereunder, except for in the case of clause (b), (i) the provisions of Section 5.8 and Section 8.13, (ii) with respect to the Financing Sources (who shall be third party beneficiaries thereof and without whose consent such Sections may not be amended in any way adverse to the Financing Sources), Sections 8.6 and 8.7 and (iii) the right of the Company s stockholders to receive the Merger Consideration after the Closing (a claim by the stockholders with respect to which may not be made unless and until the Closing shall have occurred) and the right of holders of Company Stock Options, Restricted Shares, RSUs and other equity awards to receive the Merger Consideration to which they are entitled pursuant to this Agreement after the Closing (a claim by such holders with respect to which may not be made unless and until the Closing shall have occurred). Each party agrees and acknowledges that in the event of a party s Willful Breach or failure to consummate the Transactions when required pursuant to this Agreement or fraud (such party, the Alleged Breaching Party), the other party shall have the right to pursue all legally available damages against such Alleged Breaching Party, and the Alleged Breaching Party shall have the right to assert all legally available defenses.

SECTION 8.7. Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, applicable to contracts executed in and to be performed entirely within that State.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appeal to an appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the agreements delivered in connection herewith or the transactions contemplated hereby or thereby or for recognition or

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enforcement of any judgment relating thereto, and each of the parties hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, (ii) agrees that any claim in respect of any such action or proceeding shall be heard and determined in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, (iii) waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, (iv) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, (v) waives, to the fullest extent permitted by Law, any claim that it is not personally subject to the jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof for any reason other than the failure to serve in accordance with this Agreement, (vi) waives, to the fullest extent permitted by Law, any claim that it or its property is exempt or immune from jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (vii) waives, to the fullest extent permitted by Law, any claim that this Agreement, or the subject mater of this Agreement, may not be enforced in or by such courts. The Company agrees, on behalf of itself and its Affiliates, stockholders and Representatives (collectively, the Company Related Parties), that the Financing Sources and their Affiliates, stockholders and Representatives (i) shall be subject to no liability or claims by the Company Related Parties arising out of or relating to this Agreement, the Debt Financing or the transactions contemplated hereby or in connection with the Debt Financing, or the performance of services by the Financing Sources or their Affiliates or Representatives with respect to the foregoing, (ii) shall, without limiting the provisions of clause (i), be beneficiaries of all limitations on remedies and damages in this Agreement that apply to Parent and (iii) are express third party beneficiaries of this Section (which may not be changed as to any Financing Source without its prior written consent). Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.9. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

(c) The provisions of Section 8.7(a) and (b) supersede any provisions in the Confidentiality Agreement with respect to the matters addressed in such Sections.

(d) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

SECTION 8.8. Specific Enforcement.

(a) The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and it is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and

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provisions of this Agreement (including the parties obligations under Sections 5.4, 5.14 and every other provision of this Agreement and to consummate the Transactions and Parent s and Merger Sub Two s obligation to pay the aggregate Merger Consideration and enforce their rights under the Debt Commitment Letters), in each case, in accordance with this Section 8.8 in the Delaware Court of Chancery or any federal court sitting in the State of Delaware, this being in addition to any other remedy to which they are entitled at law or in equity; provided, however, that the Company shall be entitled to seek specific performance to cause Parent, Merger Sub Two or Merger Sub Three to consummate the Transactions, including to effect the Closing in accordance with Section 1.2, on the terms and subject to the conditions in this Agreement, if, but only if: (A) all conditions in Sections 6.1 and 6.2 (other than those conditions that by their nature are to be satisfied at the Closing) have been satisfied or are then capable of being satisfied on or prior to the Closing, (B) Parent, Merger Sub Two and Merger Sub Three fail to complete the Closing by the date the Closing is required to have occurred pursuant to Section 1.2, (C) the Debt Financing has been funded or will be funded at the Closing and (D) the Company has irrevocably confirmed that if specific performance is granted and the Debt Financing is funded, then the Closing will occur. Notwithstanding anything herein to the contrary, it is hereby acknowledged and agreed that the Company shall be entitled to seek specific performance to cause Parent, Merger Sub Two and Merger Sub Three to enforce, including against anticipatory breach, the obligations of the lenders to fund the Debt Financing under the Debt Commitment Letters or definitive agreements relating thereto, but only in the event that each of the following has been satisfied: (i) all of the conditions set forth in Sections 6.1 and 6.2 have been satisfied or are then capable of being satisfied prior to the Closing (other than those conditions that by their nature are to be satisfied at the Closing), and Parent, Merger Sub Two and Merger Sub Three fail to complete the Closing by the date the Closing is required to have occurred pursuant to Section 1.2 and (ii) all of the conditions to the consummation of the financing provided by the Debt Commitment Letters (or, if alternative financing is being used in accordance with Section 5.14, pursuant to the commitments with respect thereto) have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing). Nothing in the immediately preceding sentence shall be construed to relieve Parent, Merger Sub Two or Merger Sub Three of any of their respective obligations, or to otherwise limit or modify any of Parent s, Merger Sub Two s or Merger Sub Three s obligations, under Section 5.14, it being acknowledged and agreed that in the event that any of the Financing Source(s) initiate litigation against Parent, Merger Sub Two or Merger Sub Three with respect to the Debt Financing, or advise Parent, Merger Sub Two or Merger Sub Three that they intend not to proceed with the Debt Financing in violation of the terms of the Debt Commitment Letters, the Company shall be entitled to specific performance to require Parent, Merger Sub Two and Merger Sub Three to take enforcement action, including seeking specific performance, to cause such Financing Sources to provide such Debt Financing, subject to the satisfaction of the conditions set forth in clauses (i) and (ii) of the immediately preceding sentence. Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (x) either party has an adequate remedy at law or (y) an award of specific performance is not an appropriate remedy for any reason at law or equity. Each party further agrees that no party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 8.8, and each party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

SECTION 8.9. Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, facsimiled (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

If to Parent, Merger Sub Two or Merger Sub Three, to:

Kinder Morgan, Inc.

500 Dallas St., Suite 1000

Houston, TX 77002

Attention: General Counsel

Facsimile: (713) 495-2737

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with a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, New York 10153

Attention: Thomas A. Roberts

Facsimile: (212) 310-8007

and

Weil, Gotshal & Manges LLP

200 Crescent Court, Suite 300

Dallas, Texas 75201

Attention: R. Jay Tabor

Facsimile: (214) 746-7777

If to the Company, New EP or Merger Sub One to:

El Paso Corporation

1001 Louisiana Street

Houston, Texas 77002

Attention: General Counsel

Facsimile: (713) 420-5043

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, New York 10019

Attention: Daniel A. Neff

David A. Katz

Facsimile: (212) 403-2309

or such other address or facsimile number as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5 P.M. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding business day in the place of receipt.

SECTION 8.10. Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 8.11. Definitions.

(a) As used in this Agreement, the following terms have the meanings ascribed thereto below:

364-Day Credit Agreement means the First Amended and Restated 364-Day Credit Agreement dated as of December 29, 2009, among El Paso Exploration & Production Company, El Paso E&P Company, L.P., Coronado Energy E&P Company, L.L.C., and El Paso E&P Zapata, L.P. as Borrowers, the Bank of Nova Scotia,

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bank of Montreal, BMO Capital Markets and other parties thereto, as amended by that certain Consent and First Amendment dated December 28, 2010 and as further amended, supplemented or modified.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

"business day" means a day except a Saturday, a Sunday or other day on which the SEC or banks in the City of New York are authorized or required by Law to be closed.

"Company ESPP" means the Everest Employee Stock Purchase Plan (as amended and restated).

"Company Joint Ventures" means Ruby Pipeline, L.L.C., Gulf LNG Holdings Group, L.L.C. and El Paso Midstream Investment Company, LLC.

"Company Stock Option" means an option or similar right to purchase Company Common Stock, including any option granted under any Company Stock Plans, but excluding an option or similar right to purchase Company Common Stock granted under the Company ESPP.

"Company Stock Plans" means any plans of the Company providing for the compensatory grant of awards of Company Common Stock or awards denominated, in whole or in part, in Company Common Stock, including the El Paso Corporation 1995 Compensation Plan for Non-Employee Directors, El Paso Corporation 2001 Stock Option Plan for Non-Employee Directors, El Paso Corporation 1999 Stock Option Plan for Non-Employee Directors, El Paso Corporation 2001 Omnibus Incentive Compensation Plan, El Paso Corporation Strategic Stock Plan, El Paso Corporation Omnibus Plan for Management Employees, El Paso Corporation 2005 Compensation Plan for Non-Employee Directors, and El Paso Corporation 2005 Omnibus Incentive Compensation Plan,, but excluding the Company ESPP.

"Derivative" means a derivative transaction within the meaning of SFAS No. 133, including any swap, option, warrant, forward purchase or sale, future, cap, floor, collar, or other similar transaction (including any option with respect to any of the foregoing) or combination thereof, or debt or equity instrument imbedding any of the same, and any related credit support, collateral, or similar arrangements relating to the same.

"E&P BNP Paribas Credit Agreement" means the Third Amended and Restated Credit Agreement, dated as of June 2, 2011, among El Paso Exploration & Production Company and El Paso E&P Company, L.P., as Borrowers, BNP Paribas, BNP Paribas Securities Corp., Scotia Capital, UBS Securities LLC, BMO Capital Markets, SG Americas Securities, LLC, UniCredit Bank AG, New York Branch, UBS Securities LLC, The Bank of Montreal, Société Générale, and the other parties thereto, as amended, supplemented or otherwise modified.

"ERISA Affiliate" means, with respect to any Person, any trade or business, whether or not incorporated, that, together with such Person, would be deemed, or has in the last six (6) years been deemed, a single employer for purpose of Section 414(b), (c) or (m) of the Code.

"GAAP" means generally accepted accounting principles in the United States.

"Governmental Authority" means any government, court, arbitrator, regulatory or administrative agency, commission or authority or other governmental instrumentality, federal, state or local, domestic, foreign or multinational.

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HSR Act means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

Knowledge (i) when used with respect to the Company, means the actual knowledge after due inquiry within the Company and its Subsidiaries of those individuals listed on Section 8.11(a) of the Company Disclosure Schedule (provided, however, that, with respect to Section 3.8(c) only, Knowledge means, in addition to the foregoing, knowing or knowledge, as such terms are defined in 15 U.S.C. §§ 78dd-1, -2, and -3) and (ii) when used with respect to Parent, Merger Sub Two or Merger Sub Three, means the actual knowledge after due inquiry within Parent and its Subsidiaries of those individuals listed on Section 8.11(a) of the Parent Disclosure Schedule.

Material Adverse Effect means, when used with respect to a Person, any change, effect, event or occurrence that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the business, financial condition or operations of such Person and its Subsidiaries, taken as a whole; provided, however, that any changes, effects, events or occurrences will be deemed not to constitute a Material Adverse Effect to the extent resulting from (i) changes, effects, events or occurrences generally affecting the economy, financial or securities markets or political, legislative or regulatory conditions or changes in the industries in which such Person operates; (ii) the announcement or pendency of this Agreement or the transactions contemplated hereby; (iii) any change in the market price or trading volume of the shares of common stock of such Person (it being understood that the facts and circumstances giving rise to such change may be deemed to constitute, and may be taken into account in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect if such facts and circumstances are not otherwise described in clauses (i), (ii) or (iv) through (ix) of this definition); (iv) acts of war or terrorism (or the escalation of the foregoing) or natural disasters or other force majeure events; (v) changes in any Laws or regulations applicable to such Person or applicable accounting regulations or principles or the interpretation thereof; (vi) the performance of this Agreement and the Transactions, including compliance with covenants set forth herein (excluding such Person operating in the ordinary course of business consistent with past practice; (vii) any legal proceedings commenced by or involving any current or former stockholders of such Person (on their own or on behalf of such Person) arising out of or related to this Agreement or the Transactions; (viii) any failure by such Person to meet any internal or analyst projections or forecasts or estimates of revenues, earnings or other financial metrics for any period (it being understood that the facts and circumstances giving rise to such failure may be deemed to constitute, and may be taken into account in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect if such facts and circumstances are not otherwise described in clauses (i) through (vii) of this definition), (ix) the effects on the Company s and its Subsidiaries business arising from employee departures that result from the announcement of the Transactions and (x) changes, effects, events or occurrences generally affecting the prices of oil, gas, natural gas, natural gas liquids or other commodities; provided, however, that changes, effects, events or occurrences referred to in clauses (i), (iv) and (v) above shall be considered for purposes of determining whether there has been or would reasonably be expected to be a Material Adverse Effect if and to the extent such state of affairs, changes, effects, events or occurrences has had or would reasonably be expected to have a disproportionate adverse effect on such Person and its Subsidiaries, as compared to other companies operating in the industries in which such Person and its Subsidiaries operate.

Material Upstream Asset Group means an Upstream Asset, designated by field or region having a present value, as shown on the Reserve Report of greater than, or equal to, $125,000,000, using a discount rate of ten percent (10%).

Parent Alternative Transaction means, any inquiry, proposal or offer from Person or group relating to any (A) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of Parent and its Subsidiaries (including securities of Subsidiaries) equal to 20% or more of Parent s consolidated assets or to which 20% or more of Parent s revenues or earnings on a consolidated basis are attributable, (B) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of beneficial

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ownership (within the meaning of Section 13 under the Exchange Act) of 20% or more of any class of equity securities of Parent, (C) tender offer or exchange offer that if consummated would result in any Person or group (as defined in Section 13(d) of the Exchange Act) beneficially owning 20% or more of any class of equity securities of Parent or (D) merger, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving Parent or any of its Subsidiaries which is structured to permit such Person or group to acquire beneficial ownership of at least 20% of Parent s consolidated assets or equity interests.

Parent Joint Ventures means Midcontinent Express Pipeline LLC, Rockies Express Pipeline LLC and Fayetteville Express Pipeline LLC.

Person means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity, including a Governmental Authority.

Restricted Share means an award of restricted Company Common Stock granted under a Company Stock Plan.

Subsidiary when used with respect to any party, means any corporation, limited liability company, partnership, association, trust or other entity the accounts of which would be consolidated with those of such party in such party s consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests or, in the case of a limited liability company, the managing member) are, as of such date, owned by such party or one or more Subsidiaries of such party or by such party and one or more Subsidiaries of such party. For purposes of Article III, when used with respect to the Company, the term Subsidiary shall include the Company Joint Ventures. For purposes of Article III, when used with respect to Parent, the term Subsidiary shall include the Parent Joint Ventures. With respect to the Company, the term Subsidiary shall include Four Star Oil & Gas Company (other than for purposes of Section 3.10) and EPB. With respect to Parent, the term Subsidiary shall include Kinder Morgan Energy Partners, L.P.

Transactions refers collectively to (i) this Agreement, the First Step Merger Agreement, the Warrant Agreement and the transactions contemplated hereby and thereby, including the First Merger, the LLC Conversion, the Second Merger and the Third Merger and (ii) the Voting Agreement and the transactions contemplated thereby.

Unicredit Agreement means the Reimbursement Agreement dated April 28, 2011 between the Company and Unicredit Bank, AG, New York Branch (as amended, supplemented or modified).

Upstream Assets means assets of the Company s Exploration and Production Segment.

Waiver Credit Agreements means collectively, the E&P BNP Paribas Credit Agreement and the Unicredit Agreement or any substitute debt agreement relating thereto to the extent such agreement requires a waiver or consent in connection with the Transactions.

Willful Breach means (i) with respect to any breaches or failures to perform any of the covenants or other agreements contained in this Agreement, a material breach, or failure to perform, that is a consequence of an act or omission undertaken by the breaching party (or, in the case of Section 5.3 with respect to the Company, the consequence of an act or omission of a Representative or a Subsidiary of the Company) with the Knowledge that the taking of, or failure to take, such act would, or would be reasonably expected to, cause a material breach of this Agreement and (ii) the failure by any party to consummate the Transactions after all of the conditions set forth in Article VI have been satisfied or waived (by the party entitled to waive any such applicable conditions).

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The following terms are defined on the page of this Agreement set forth after such term below:

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SECTION 8.12. Interpretation.

(a) When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words include, includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation. The words hereof, here and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement with the assistance of counsel and other advisors and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement or interim drafts of this Agreement.

SECTION 8.13. Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney, representative or affiliate of any party hereto or of any of their respective affiliates shall have any liability (whether in contract or in tort) for any obligations or liabilities of such party arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby; provided, however, that nothing in this Section 8.13 shall limit any liability of the parties to this Agreement for breaches of the terms and conditions of this Agreement.

[*signature page follows*]

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

KINDER MORGAN, INC.

By: /s/ Joseph Listengart
Name: Joseph Listengart
Title: Vice President

SHERPA MERGER SUB, INC.

By: /s/ Joseph Listengart
Name: Joseph Listengart
Title: Vice President

SHERPA ACQUISITION, LLC

By: /s/ Joseph Listengart
Name: Joseph Listengart
Title: Vice President

EL PASO CORPORATION

By: /s/ Douglas L. Foshee
Name: Douglas L. Foshee
Title: Chairman, President and Chief Executive Officer

SIRIUS HOLDINGS MERGER CORPORATION

By: /s/ John R. Sult
Name: John R. Sult
Title: Chief Executive Officer and President

SIRIUS MERGER CORPORATION

By: /s/ John R. Sult
Name: John R. Sult
Title: Chief Executive Officer and President

[SIGNATURE PAGE TO THE AGREEMENT AND PLAN OF MERGER]

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Annex B

AGREEMENT AND PLAN OF MERGER

BY AND BETWEEN

EL PASO CORPORATION

AND

SIRIUS MERGER CORPORATION

This Agreement and Plan of Merger (this "Agreement"), dated as of October 16, 2011, is made by and among El Paso Corporation, a Delaware corporation (the "Company"), Sirius Merger Corporation, a Delaware corporation and indirect wholly owned subsidiary of the Company ("Merger Sub One") (the Company and Merger Sub One, when referred to individually, each a "Constituent Corporation" and when referred to collectively, "Constituent Corporations"), and Sirius Holdings Merger Corporation, a Delaware corporation and a direct wholly owned subsidiary of the Company ("New EP").

WHEREAS, the Company owns all the outstanding shares of stock of New EP.

WHEREAS, New EP owns all the outstanding shares of stock of Merger Sub One.

WHEREAS, there are no shares of preferred stock of the Company currently issued or outstanding.

WHEREAS, the Board of Directors of each of the Constituent Corporations has approved and declared it advisable and in the best interests of each of the Constituent Corporations and its respective stockholders that Merger Sub One be merged with and into the Company (hereinafter, in such capacity, sometimes referred to as the "EP Surviving Company") as permitted by the Delaware General Corporation Law (the "DGCL") under and pursuant to the terms hereinafter set forth (the "First Merger").

WHEREAS, the Board of Directors of the Company has recommended that the stockholders of the Company approve and adopt this Agreement.

WHEREAS, the Board of Directors of Merger Sub One has recommended that the sole stockholder of Merger Sub One approve and adopt this Agreement.

WHEREAS, the First Merger is the first step in a series of transactions set forth in the Agreement and Plan of Merger, dated as of October 16, 2011, among Kinder Morgan, Inc., Sherpa Merger Sub, Inc., Sherpa Acquisition, LLC, New EP, Merger Sub One and the Company (the "Second Step Merger Agreement").

WHEREAS, for federal income tax purposes, it is intended that the First Merger and the LLC Conversion (as such term is defined in the Second Step Merger Agreement), taken together, shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and that this Agreement constitutes, and is adopted as, a plan of reorganization for purposes of Sections 354 and 361 of the Code.

WHEREAS, capitalized terms used herein and not defined have the meanings assigned to such terms in the Second Step Merger Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, the parties have agreed as follows:

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ARTICLE 1

PLAN OF MERGER

1.01 Plan Adopted. A plan of merger of each of the Constituent Corporations pursuant to the provisions of Section 251 of the DGCL is adopted as follows:

(a) The Merger. At the First Effective Time (as such term is defined in Section 1.02 of this Agreement), Merger Sub One shall be merged with and into the Company.

(b) Surviving Corporation. The surviving corporation in the First Merger shall be the Company.

(c) Effects of the First Merger. At the First Effective Time, the separate existence of Merger Sub One shall cease, and the EP Surviving Company shall succeed, without other transfer, to all the rights and property of Merger Sub One and shall be subject to all the debts and liabilities of Merger Sub One as provided in Section 259 of the DGCL.

(d) Merger Sub One Common Stock. At the First Effective Time, each share of common stock of Merger Sub One, par value $0.01 per share (the "Merger Sub One Common Stock"), issued and outstanding immediately prior to the First Effective Time shall be converted into and exchanged for one share of common stock, par value $3.00 per share, of the EP Surviving Company.

(e) Company Common Stock. At the First Effective Time, each share of common stock of the Company, par value $3.00 per share (the "Company Common Stock"), issued and outstanding immediately prior to the First Effective Time shall be converted into and exchanged for one fully paid and nonassessable share of common stock, par value $3.00 per share, of New EP.

(f) New EP Common Stock. Effective as of the First Effective Time, each share of common stock of New EP, par value $3.00 per share, owned by the Company shall be contributed to the capital of New EP.

(g) Company Stock Options, Restricted Shares, Company Performance RSUs and/or other securities of the Company. The Company shall take all actions as may be necessary so that at the First Effective Time, each Company Stock Option, Restricted Share, Company Performance RSU and other security of the Company (collectively, the "Company Securities") shall, automatically and without any action on behalf of the holder thereof, be converted into a stock option, restricted share, performance restricted stock unit or other security, as the case may be, denominated in shares of common stock, par value $3.00 per share, of New EP, with each share of Company Common Stock subject to each such Company Security immediately prior to the First Effective Time converted into a share of common stock, par value $3.00 per share, of New EP. For the avoidance of doubt, all terms and conditions applicable to each such Company Security immediately prior to First Effective Time shall, except as provided in the immediately preceding sentence, remain in effect immediately after the First Effective Time. The conversion of Company Securities pursuant to this Section 1.01(f) shall occur in such manner so as to avoid the imposition of any penalty or other taxes under Section 409A of the Code. New EP shall remain subject to the obligations of the Company with respect to any such Company Security immediately after the First Effective Time. Following the First Effective Time and contingent upon the Second Effective Time (as such term as defined in the Second Step Merger Agreement), the Company Securities shall be treated in the manner set forth in Section 2.5 of the Second Step Merger Agreement.

1.02 Effective Time of the First Merger. The First Merger shall become effective at such time as is specified in the Certificate of Merger that is duly filed with the office of the Secretary of State of the State of Delaware or at such later time as is specified in the Certificate of Merger in

accordance with the DGCL and the Second Merger Agreement (the First Effective Time).

1.03 No Exchange of Stock Certificates is Required. Each outstanding certificate representing shares of Company Common Stock shall be deemed for all purposes, from and after the First Effective Time, to represent the same number of shares of Common Stock of New EP into which such shares of Company Common Stock

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shall be converted and exchanged in the First Merger. Each outstanding certificate representing shares of Merger Sub One Common Stock shall be deemed for all purposes, from and after the First Effective Time, to represent the same number of shares of Common Stock of the EP Surviving Company into which such shares of Merger Sub One Common Stock shall be converted and exchanged in the First Merger. Holders of outstanding certificates representing shares of Company Common Stock or Merger Sub One Common Stock, as applicable, shall not be asked to surrender such certificates for cancellation. The registered owner on the books and records of the Company or Merger Sub One, as applicable, of all such outstanding certificates shall have and be entitled to exercise all voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of New EP or the Common Stock of the EP Surviving Company, as applicable, represented by such outstanding certificates.

1.04 No Appraisal Rights. In accordance with Section 262 of the DGCL, no appraisal rights shall be available to the holders of shares of Company Common Stock or the shares of Merger Sub One Common Stock in connection with the First Merger.

1.05 Tax Consequences. For federal income tax purposes, the First Merger and the LLC Conversion, taken together, are intended to constitute a reorganization within the meaning of Section 368 of the Code.

1.06 Closing. Subject to and in accordance with the terms and conditions of this Agreement, the closing of the Merger shall take place as soon as reasonably practicable after satisfaction of the conditions precedent in Section 6.01 of this Agreement, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York, 10019, unless another date or place is agreed in writing by the parties to this Agreement.

ARTICLE II

CERTIFICATE OF INCORPORATION AND BYLAWS; DIRECTORS AND OFFICERS

2.01 Certificate of Incorporation and Bylaws of EP Surviving Company. The Certificate of Incorporation and Bylaws of the Company shall be unaffected by the First Merger, and, the Certificate of Incorporation and Bylaws in effect immediately prior to the First Effective Time shall continue in effect as the Certificate of Incorporation and Bylaws of the EP Surviving Company, until amended or repealed in accordance with the provisions thereof and of applicable law.

2.02 Directors. At the First Effective Time, the directors of the Company in office immediately prior to the First Effective Time shall be the directors of the EP Surviving Company and shall continue to hold office until their successors are duly elected or appointed and qualified in the manner provided in the Certificate of Incorporation and Bylaws of the EP Surviving Company or as otherwise provided by law.

2.03 Officers. All persons who are officers of the Company immediately prior to the First Effective Time shall remain as officers of the EP Surviving Company until the Board of Directors of the EP Surviving Company shall otherwise determine. The Board of Directors of the EP Surviving Company may elect or appoint such additional officers as it may determine in accordance with the Certificate of Incorporation and Bylaws of the EP Surviving Company or as otherwise provided by law.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Merger Sub One as follows:

3.01 Organization, Standing, and Power. The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has the corporate power and authority to own, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted.

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3.02 Capital Structure. The authorized capital stock of the Company is as set forth in Section 3.2(a) of the Second Step Merger Agreement.

3.03 Authority; Execution and Delivery; Enforceability.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the First Merger. The Company s execution and delivery of this Agreement and consummation of the First Merger have been duly authorized by all necessary corporate action on the part of the Company, subject to receipt of approval of the stockholders of the Company. The Company has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium or similar laws affecting the enforcement of creditors rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding may be brought).

(b) The Board of Directors of the Company has duly and unanimously adopted resolutions (i) approving, adopting and declaring advisable this Agreement; (ii) determining that entering into this Agreement is in the best interests of the Company and its stockholders; and (iii) recommending that the stockholders of the Company approve and adopt this Agreement.

(c) The only vote of holders of any class or series of capital stock of the Company necessary to approve and adopt this Agreement is the approval and adoption of this Agreement by the affirmative vote of the holders of at least a majority of the votes entitled to be cast by holders of the shares of Company Common Stock then outstanding (the Company Stockholder Approval).

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF MERGER SUB ONE

Merger Sub One represents and warrants to the Company as follows:

4.01 Organization, Standing, and Power. Merger Sub One is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized. Since the date of its incorporation, Merger Sub One has not carried on any business or conducted any operations other than the execution of this Agreement, the Second Step Merger Agreement, the performance of its obligations hereunder and thereunder and matters ancillary thereto.

4.02 Capitalization of Merger Sub One. The authorized capital stock of Merger Sub One consists of one thousand (1,000) shares of Merger Sub One Common Stock, all of which have been validly issued, are fully paid and nonassessable and are owned by New EP free and clear of any lien.

4.03 Authority; Execution and Delivery; Enforceability. Merger Sub One has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the First Merger. Merger Sub One s execution and delivery of this Agreement and consummation of the First Merger have been duly authorized by all necessary corporate action on the part of Merger Sub One, subject to the adoption of this Agreement by New EP, as sole stockholder of Merger Sub One. Merger Sub One has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium or similar laws affecting the enforcement of creditors rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding may be brought).

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ARTICLE V

GOVERNING LAW

5.01 Governing Law. This Agreement shall be governed by the laws of the State of Delaware without regard to principles of conflicts of law.

ARTICLE VI

CONDITIONS PRECEDENT

6.01 Conditions to Each Party s Obligation to Effect the First Merger. The respective obligation of each party to effect the First Merger is subject to the satisfaction or waiver (to the extent permitted therein) of the condition to closing set forth under Section 6.1(a) in the Second Step Merger Agreement.

ARTICLE VI

AMENDMENT AND TERMINATION

6.01 Amendment. To the fullest extent permitted by Delaware law, this Agreement may be amended by mutual consent of the Boards of Directors of the Constituent Corporations at any time prior to the First Effective Time, notwithstanding any approval of this Agreement by the stockholders of either or both of the Constituent Corporations.

6.02 Termination. To the fullest extent permitted by Delaware law, this Agreement may be terminated, and the First Merger herein provided for may be abandoned, by mutual consent of the Boards of Directors of the Constituent Corporations at any time prior to the First Effective Time, notwithstanding any approval of this Agreement by the stockholders of either or both of the Constituent Corporations.

ARTICLE VII

GENERAL PROVISIONS

7.01 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

7.02 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

7.03 Entire Agreement; No Third-Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the First Merger, and is not intended to confer upon any person other than the parties any rights or remedies.

7.04 Assignment. This Agreement shall not be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

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IN WITNESS WHEREOF, this Agreement, having been first duly approved by the respective Boards of Directors of each Constituent Corporation and New EP, is hereby executed on behalf of each Constituent Corporation and of New EP by a duly authorized officer thereof as of the date specified above.

EL PASO CORPORATION

By: /s/ Douglas L. Foshee
Name: Douglas L. Foshee
Title: Chairman, President and

Chief Executive Officer

SIRIUS MERGER CORPORATION

By: /s/ John R. Sult
Name: John R. Sult
Title: Chief Executive Officer and President

SIRIUS HOLDINGS MERGER CORPORATION

By: /s/ John R. Sult
Name: John R. Sult
Title: Chief Executive Officer and President

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Annex C

VOTING AGREEMENT

This VOTING AGREEMENT (this Agreement), is dated as of October 16, 2011, by and among El Paso Corporation (the Company) and the stockholders of Kinder Morgan Inc. (Buyer) listed on the signature pages hereto (each a Stockholder and collectively, the Stockholders).

W I T N E S S E T H:

WHEREAS, the Company, Sherpa Merger Sub, Inc., a Delaware corporation, Sherpa Acquisition, LLC, a Delaware limited liability company, Sirius Merger Corporation, a Delaware corporation, Sirius Holdings Merger Corporation, a Delaware corporation, and Buyer entered into an Agreement and Plan of Merger, dated as of October 16, 2011 (the Merger Agreement), providing for, among other things, the acquisition of the Company by Kinder Morgan through the consummation of the Transactions (as defined in the Merger Agreement), the result of which will include the Company being a wholly owned subsidiary of Buyer (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Merger Agreement as of the date hereof); and

WHEREAS, as of the date hereof, each Stockholder is the record and beneficial owner of the number of shares of Parent Class A Stock of Buyer set forth on Exhibit A hereto (together with such additional shares of such class or of Parent Class P Stock as become beneficially owned by such Stockholder, whether upon the exercise of options, conversion of convertible securities or otherwise, and any other voting securities of Buyer (whether acquired heretofore or hereafter) but excluding any shares sold or transferred on or after the date hereof in compliance with Section 4.1, the Owned Shares), which shares collectively represent at least 75% of the voting power of the outstanding capital stock of Buyer (as calculated with respect to the vote that is necessary to obtain the Parent Stockholder Approval); and

WHEREAS, as a condition to the Company s willingness to enter into and perform its obligations under the Merger Agreement, the Company has required that each Stockholder agree, and each Stockholder has agreed, subject to the terms of this Agreement, (i) to vote all of such Stockholder s Owned Shares in favor of (a) the issuance of the Parent Class P Stock to the Company s shareholders in connection with the consummation of the Merger (including shares of Parent Class P Stock to be issued upon the exercise of any Parent Class P Warrants) and the Parent Class P Warrants (the Stock Issuance) and (b) any other matters submitted to the shareholders of Buyer in furtherance of the Merger or the other transactions contemplated by the Merger Agreement and (ii) to take the other actions described herein; and

WHEREAS, each Stockholder desires to express its support for the Merger Agreement and the transactions contemplated thereby, including the Stock Issuance.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration given to each party hereto, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Vote; Irrevocable Proxy.

1.1 Agreement to Vote. Each Stockholder hereby agrees that, from the date hereof until the earlier of (i) the time that the Parent Stockholder Approval has been obtained and no other vote by the Buyer s shareholders is required to consummate the transactions contemplated by the Merger Agreement and (ii) termination of this Agreement in accordance with Section 5.1, at any meeting of the stockholders of Buyer at which the approval of the Stock Issuance or any other matter requiring a vote of Buyer s shareholders necessary to consummate the transactions contemplated by the Merger Agreement is to be voted upon, however called, or any adjournment or postponement thereof, such Stockholder shall be present (in person or by proxy) and vote (or cause to be voted) all of its Owned Shares at such time (a) in favor of approval of the

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Stock Issuance and (b) against any Parent Alternative Transaction and against any action or agreement that would reasonably be expected to materially impair the ability of the Buyer, Merger Sub or the Company to complete the Merger, or that would otherwise reasonably be expected to prevent or materially impede or materially delay the consummation of the transactions contemplated by the Merger Agreement.

1.2 Irrevocable Proxy. Each Stockholder hereby irrevocably appoints the Company as its attorney-in-fact and proxy with full power of substitution and resubstitution, to the full extent of such Stockholder s voting rights with respect to such Stockholder s Owned Shares (which proxy is irrevocable and which appointment is coupled with an interest, including for purposes of Section 212 of the Delaware General Corporation Law, but for the avoidance of doubt shall be deemed terminated and released with respect to any shares sold or transferred on or after the date hereof in compliance with Section 4.1 or Section 4.7) to vote all such Stockholder s Owned Shares in favor of the Stock Issuance or any other matter requiring a vote of Buyer s shareholders necessary to consummate the transactions contemplated by the Merger Agreement. Upon the Company s reasonable request, each Stockholder agrees to execute any further agreement or form reasonably necessary or appropriate to confirm and effectuate the grant of the proxy contained herein. The proxy granted by each Stockholder in this Section 1.2 shall remain valid until the earlier of (i) the time that the Parent Stockholder Approval has been obtained or (ii) the termination of this Agreement in accordance with Section 5.1, in the case of clause (i) or (ii), immediately upon which each such proxy shall automatically terminate without any further action required by any person.

2. Representations and Warranties of Stockholders. Each Stockholder hereby represents and warrants to the Company as follows:

2.1 Due Organization. Such Stockholder, if a corporation, partnership or other entity, has been duly organized, is validly existing and is in good standing under the laws of the state of its formation or organization.

2.2 Power; Due Authorization; Binding Agreement. Such Stockholder has full legal capacity, power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by such Stockholder of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate, partnership or other applicable action on the part of such Stockholder, and no other proceedings on the part of such Stockholder are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by such Stockholder and, assuming the due and valid authorization, execution and delivery hereof by the other parties hereto, constitutes a valid and binding agreement of such Stockholder, enforceable against such Stockholder in accordance with its terms.

2.3 Ownership of Shares. On the date hereof, the Owned Shares set forth opposite such Stockholder s name on Exhibit A hereto are owned beneficially by such Stockholder, free and clear of any claims, liens, encumbrances and security interests other than any restrictions existing under Buyer s certificate of incorporation or by-laws or the Buyer Shareholders Agreement (as defined below) (the Buyer Governance Agreements). Other than proxies and restrictions in favor of the Company pursuant to this Agreement and except for such transfer restrictions of general applicability as may be provided under the Securities Act of 1933, as amended, the blue sky laws of the various states of the United States, as of the date hereof, and any restrictions contained in the Buyer Governance Agreements, such Stockholder has, and at any stockholder meeting of Buyer in connection with the Merger Agreement and the transactions contemplated by the Merger Agreement, including approval of the Stock Issuance, such Stockholder will have (except as otherwise permitted by this Agreement, including in connection with the permitted Transfer of any Owned Shares), sole voting power and sole dispositive power with respect to all of the Owned Shares of such Stockholder. As of the date hereof, the Stockholders collectively own and on every date through the date that the Parent Stockholder Approval has been obtained (including the date of any meeting or any adjournment or postponements thereof of the stockholders of the Buyer at which Parent Stockholder Approval is sought and the date of any record date for determining the stockholders entitled to vote at any

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such meeting of the stockholders of Buyer), the Stockholders will own an amount of shares of Buyer s capital stock sufficient to obtain the Parent Stockholder Approval.

2.4 No Conflicts. The execution and delivery of this Agreement by such Stockholder does not, and the performance of the terms of this Agreement by such Stockholder will not, (a) require such Stockholder to obtain the consent or approval of, or make any filing with or notification to, any governmental or regulatory authority, domestic or foreign other than any filings required under U.S. federal or state securities laws, (b) require the consent or approval of any other person pursuant to any agreement, obligation or instrument binding on such Stockholder or its properties and assets, (c) conflict with or violate any organizational document or law, rule, regulation, order, judgment or decree applicable to such Stockholder or pursuant to which any of its or its affiliates respective properties or assets are bound or (d) violate any other agreement to which such Stockholder or any of its affiliates is a party including, without limitation, the Buyer s certificate of incorporation or by-laws or the Shareholders Agreement, dated as of February 10, 2011, among Buyer and the persons set forth on the signature pages thereto (the Buyer Shareholders Agreement) or any other voting agreement, stockholders agreement, irrevocable proxy or voting trust applicable to such Stockholder. Other than the Buyer Shareholders Agreement, the Owned Shares of such Stockholder are not, with respect to the voting or transfer thereof, subject to any other agreement, including any voting agreement, stockholders agreement, irrevocable proxy or voting trust.

2.5 Acknowledgment. Such Stockholder understands and acknowledges that the Company is entering into the Merger Agreement in reliance upon such Stockholder s execution, delivery and performance of this Agreement.

3. Representations and Warranties of the Company. The Company hereby represents and warrants to the Stockholders as follows:

3.1 Due Organization. The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 Power; Due Authorization; Binding Agreement. The Company has full corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of the Company, and no other proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due and valid authorization, execution and delivery hereof by the other parties hereto, constitutes a valid and binding agreement of the Company.

4. Certain Covenants of the Stockholders.

4.1 Restriction on Transfer, Proxies and Non-Interference. Each Stockholder hereby agrees, except as permitted by Section 4.7, from the date hereof until the earlier of, (i) the termination of this Agreement in accordance with Section 5.1 and (ii) the time that the Parent Stockholder Approval has been obtained, not to (a) sell, transfer, pledge, encumber, assign or otherwise dispose of, or enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, pledge, encumbrance, assignment or other disposition of, or limitation on the voting rights of, any of the Owned Shares (any such action, a Transfer) that would result in the Stockholders, collectively, owning shares of Buyer s capital stock less than such number of shares necessary to obtain the Parent Stockholder Approval, (b) grant any proxies or powers of attorney with respect to the Owned Shares, deposit any Owned Shares into a voting trust or enter into a voting agreement with respect to any Owned Shares, in each case with respect to any vote on the approval of the Stock Issuance or any other matters set forth in this Agreement including, without limitation, Article I (other than a proxy to the Company as set forth in Section 1.2), (c) take any action that would cause any representation or warranty of such Stockholder contained herein to become untrue or incorrect or have the effect of preventing or disabling such Stockholder from performing its obligations under this Agreement, or

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(d) commit or agree to take any of the foregoing actions. Any action taken in violation of the foregoing sentence shall be null and void and each Stockholder agrees that any such prohibited action may and should be enjoined. If any involuntary Transfer of any of the Owned Shares shall occur (including, but not limited to, a sale by a Stockholder s trustee in any bankruptcy, or a sale to a purchaser at any creditor s or court sale), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Owned Shares subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect until valid termination of this Agreement.

4.2 No Limitations on Actions. The parties hereto acknowledge that each Stockholder is entering into this Agreement solely in its capacity as the beneficial owner of the applicable Owned Shares and this Agreement shall not limit or otherwise affect the actions or fiduciary duties of such Stockholder, or any affiliate, employee or designee of such Stockholder or any of its affiliates in its capacity, if applicable, as an officer or director of Buyer.

4.3 Directors. Each Stockholder agrees that, to the extent it is a Stockholder at the time of the first annual shareholders meeting of Buyer following the consummation of the Merger (the First Post-Closing Meeting), it will vote all of its Owned Shares in favor of the election of the nominees designated by the Company pursuant to Section 5.15 of the Merger Agreement to the board of directors of Buyer at such shareholders meeting.

4.4 No Solicitation. Each Stockholder agrees that it shall not, without the Company s written consent, directly or indirectly solicit, initiate, knowingly facilitate, knowingly encourage (including by way of furnishing information) or knowingly induce or take any other action designed to lead to any inquiries or proposals that constitute, or would reasonably be expected to lead to, the submission of a Parent Alternative Proposal. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to prevent the Stockholders from Transferring any equity securities of Buyer or taking any action in connection with any Transfer or proposed Transfer of equity securities of Buyer that is not in violation of the Transfer restrictions set forth in Section 4.1 to the extent that such Transfer does not involve a merger, consolidation, share exchange, business combination, recapitalization, liquidation or similar transaction involving Parent or an exchange offer or tender offer for Buyer s equity securities.

4.5 Amendment to Buyers Shareholders Agreement. Each Stockholder agrees to execute the amendment to the Buyer Shareholders Agreement to give effect to the matters set forth in Section 5.15 of the Merger Agreement on the date hereof.

4.6 Further Assurances. From time to time, at the request of the Company and without further consideration, each Stockholder shall execute and deliver such additional documents and take all such further action as may be reasonably necessary or desirable to consummate and make effective the transactions contemplated by this Agreement.

4.7 Affiliate Transfers. Any Stockholder that Transfers any Owned Shares (a) to Permitted Transferees (as such term is used and defined in the Buyers Shareholders Agreement) and Affiliates (as such term is used and defined in the Buyers Shareholders Agreement) of such Stockholder and (b) in the case of Richard D. Kinder, to a Kinder Foundation (collectively together with such Permitted Transferees and Affiliates, Potential Transferees) shall cause each such Potential Transferee to (i) execute a signature page to this Agreement pursuant to which such Potential Transferee agrees to be a Stockholder pursuant to this Agreement with respect to such Transferred Owned Shares and (ii) provide the requisite contact information for such Potential Transferee as contemplated by Exhibit B. Transfers of Owned Shares to Potential Transferees made pursuant to this Section 4.7 shall not be a breach of this Agreement.

5. Miscellaneous.

5.1 Termination of this Agreement. This Agreement, and all terms and conditions contained herein, shall terminate upon the earlier to occur of (i) the termination of the Merger Agreement in accordance with

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its terms and (ii) the Effective Time; provided, that if the Closing occurs, Section 4.3 of this Agreement shall terminate immediately following the First Post-Closing Meeting.

5.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 5.1, this Agreement shall become void and of no effect with no liability on the part of any party hereto; provided, however, no such termination shall relieve any party hereto from any liability for any breach of this Agreement occurring prior to such termination.

5.3 Entire Agreement; Assignment. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement; provided, that Buyer shall be an express third party beneficiary of this Agreement solely for the purpose of being permitted, with a Supermajority Board Vote (as such term is used and defined in the bylaws of Buyer on the date hereof) to enforce Section 1.1 in a manner (pursuant and subject to the provisions of Section 1.1) to cause each Stockholder to vote to approve the Stock Issuance and any other matter requiring a vote of Buyer s shareholders necessary to consummate the transactions contemplated by the Merger Agreement, solely to the extent that the Company refuses, in writing upon request of the Buyer, to enforce such provision against the Stockholders. This Agreement shall not be assigned by operation of law or otherwise and, subject only to the immediately preceding sentence, shall be binding upon and inure solely to the benefit of each party hereto.

5.4 Amendments. This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement executed by each of the parties hereto.

5.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally (notice deemed given upon receipt), telecopied (notice deemed given upon confirmation of receipt), by email (notice deemed given upon sending), or sent by a nationally recognized overnight courier service, such as Federal Express (notice deemed given upon receipt of proof of delivery), to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to a Stockholder, to the address and facsimile set forth opposite such Stockholder s name on Exhibit B attached hereto

with copies in any case to:

Kinder Morgan, Inc.

500 Dallas Street, Suite 1000

Houston, Texas 77002

Attn: General Counsel

Facsimile: (713) 369-9410

-and-

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Attn: Thomas A. Roberts and R. Jay Tabor

Facsimile: (212) 310-6717

If to the Company:

El Paso Corporation

1001 Louisiana Street

Houston, Texas 77002

Attn.: General Counsel

Facsimile: (713) 420-5043

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with a copy to:

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, New York 10019

Attn.: David A. Katz

Facsimile: (212) 403-2000

5.6 Governing Law; Venue.

(a) This Agreement and all claims or causes of action (whether at Law, in contract, in tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to conflicts of laws principles (whether of the State of Delaware or any other jurisdiction) that would result in the application of the Law of any other state.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the Federal court of the United States of America sitting in the State of Delaware, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the agreements delivered in connection herewith or the transactions contemplated hereby or thereby or for recognition or enforcement of any judgment relating thereto, and each of the parties hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the Federal court of the United States of America sitting in the State of Delaware, and any appellate court from any thereof, (ii) agrees that any claim in respect of any such action or proceeding shall be heard and determined in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in the State of Delaware, and any appellate court from any thereof, (iii) waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in State of Delaware, and any appellate court from any thereof, (iv) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in the State of Delaware, and any appellate court from any thereof, (v) waives, to the fullest extent permitted by Law, any claim that it is not personally subject to the jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof for any reason other than the failure to serve in accordance with this Agreement, (vi) waives, to the fullest extent permitted by Law, any claim that it or its property is exempt or immune from jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the Federal court of the United States of America sitting in the State of Delaware or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (vii) waives, to the fullest extent permitted by Law, any claim that this Agreement, or the subject mater hereof, may not be enforced in or by such courts. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 5.5. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE

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TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

5.7 Specific Performance. Each Stockholder agrees that, in the event of any breach or threatened breach by such Stockholder of any covenant or obligation contained in this Agreement, the Company would be irreparably harmed and that money damages would not provide an adequate remedy. Accordingly, each Stockholder agrees that Buyer shall be entitled (in addition to any other remedy to which the Company is entitled at law or in equity) to seek and obtain (a) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation, and (b) an injunction restraining such breach or threatened breach. Each Stockholder further agrees that neither the Company nor any other Person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 5.7, and each Stockholder irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

5.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission.

5.9 Descriptive Headings. The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

5.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

5.11 Non-Recourse.

(a) No past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney, representative or affiliate of any party hereto or of any of their respective affiliates shall have any liability (whether in contract or in tort) for any obligations or liabilities of such party arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby; provided, however, that nothing in this Section 5.11 shall limit any liability of the parties hereto for breaches of the terms and conditions of this Agreement.

(b) Each party to this Agreement enters into this Agreement solely on its on behalf, each such party shall solely by severally liable for any breaches of this Agreement by such party and in no event shall any party be liable for breaches of this Agreement by any other party hereto.

[*remainder of page intentionally blank*]

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

EL PASO CORPORATION

By: /s/ Douglas L. Foshee
Name: Douglas L. Foshee
Title: Chairman, President and

Chief Executive Officer

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STOCKHOLDERS:

/s/ Richard D. Kinder
Richard D. Kinder

GS CAPITAL PARTNERS V FUND, L.P.

By: GSCP V Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP V OFFSHORE KNIGHT HOLDINGS, L.P.

By: GS Capital Partners V Offshore Fund, L.P.
its General Partner

By: GSCP V Offshore Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP V GERMANY KNIGHT HOLDINGS, L.P.

By: GSCP V GmbH Knight Holdings
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS CAPITAL PARTNERS V INSTITUTIONAL, L.P.

By: GS Advisors V, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

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GS CAPITAL PARTNERS VI FUND, L.P.

By: GSCP VI Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP VI OFFSHORE KNIGHT HOLDINGS, L.P.

By: GS Capital Partners VI Offshore Fund, L.P.
its General Partner

By: GSCP VI Offshore Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP VI GERMANY KNIGHT HOLDINGS, L.P.

By: GSCP VI GmbH Knight Holdings
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS CAPITAL PARTNERS VI PARALLEL, L.P.

By: GS Advisors VI, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GOLDMAN SACHS KMI INVESTORS, L.P.

By: GS KMI Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

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GSCP KMI INVESTORS, L.P.

By: GSCP KMI Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP KMI INVESTORS OFFSHORE, L.P.

By: GSCP KMI Offshore Advisors, Inc.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS INFRASTRUCTURE KNIGHT HOLDINGS, L.P.

By: GS International Infrastructure Partners I, L.P.
its General Partner

By: GS Infrastructure Advisors 2006, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS INSTITUTIONAL INFRASTRUCTURE PARTNERS I, L.P.

By: GS Infrastructure Advisors 2006, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS GLOBAL INFRASTRUCTURE PARTNERS I, L.P.

By: GS Infrastructure Advisors 2006, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

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HIGHSTAR II KNIGHT ACQUISITION SUB, L.P.

By: Highstar Capital GP II, L.P., its General Partner

By: Highstar Management II, LLC, its General Partner

By: Highstar Capital LP, its attorney-in-fact

By: /s/ Michael J. Miller
Name: Michael J. Miller
Title: Partner

HIGHSTAR III KNIGHT ACQUISITION SUB, L.P.

By: Highstar GP III Prism Fund, L.P., its General Partner

By: Highstar Management III, LLC, its General Partner

By: Highstar Capital LP, its attorney-in-fact

By: /s/ Michael J. Miller
Name: Michael J. Miller
Title: Partner

HIGHSTAR KNIGHT PARTNERS, L.P.

By: Highstar Knight Co-Investment GP, LLC, its General Partner

By: Highstar Capital LP, its attorney-in-fact

By: /s/ Michael J. Miller
Name: Michael J. Miller
Title: Partner

HIGHSTAR KMI BLOCKER LLC

By: Highstar III Knight Acquisition Sub, L.P., its managing member

By: Highstar GP III Prism Fund, L.P., its General Partner

By: Highstar Management III, LLC, its General Partner

By: Highstar Capital LP, its attorney-in-fact

By: /s/ Michael J. Miller
Name: Michael J. Miller
Title: Partner

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CARLYLE PARTNERS IV KNIGHT, L.P.

By: TC Group IV, L.P., its general partner

By: TC Group IV Managing GP, L.L.C., its general partner

By: TC Group, L.L.C., its sole member

By: TCG Holdings L.L.C., its managing member

By: /s/ Daniel A. D Aniello
Name: Daniel A. D Aniello
Title:

CP IV COINVESTMENT, L.P.

By: TC Group IV, L.P., its general partner

By: TC Group IV Managing GP, L.L.C., its general partner

By: TC Group, L.L.C., its sole member

By: TCG Holdings L.L.C., its managing member

By: /s/ Daniel A. D Aniello
Name: Daniel A. D Aniello
Title:

CARLYLE ENERGY COINVESTMENT III, L.P.

By: Carlyle Energy Coinvestment III GP, L.L.C.,
its General Partner

By: /s/ Daniel A. D Aniello
Name: Daniel A. D Aniello
Title:

CARLYLE/RIVERSTONE KNIGHT INVESTMENT PARTNERSHIP, L.P.

By: Carlyle/Riverstone Energy Partners III, L.P.,
its General Partner

By: C/R Energy GP III, LLC,
its General Partner

By: /s/ Daniel A. D Aniello
Name: Daniel A. D Aniello
Title:

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C/R KNIGHT PARTNERS, L.P.

By: Carlyle/Riverstone Energy Partners III, L.P.,
its General Partner

By: C/R Energy GP III, LLC,
its General Partner

By: /s/ Pierre Lapeyre
Name: Pierre Lapeyre
Title: Authorized Person

C/R ENERGY III KNIGHT NON-U.S. PARTNERSHIP, L.P.

By: Carlyle/Riverstone Energy Partners III, L.P.,
its General Partner

By: C/R Energy GP III, LLC,
its General Partner

By: /s/ Pierre Lapeyre
Name: Pierre Lapeyre
Title: Authorized Person

RIVERSTONE ENERGY COINVESTMENT III, L.P.

By: Riverstone Coinvestment GP LLC,
its General Partner

By: /s/ Pierre Lapeyre
Name: Pierre Lapeyre
Title: Authorized Person

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EXHIBIT A

BUYER STOCK OWNERSHIP

Stockholder	Number of Shares Class A Shares
RICHARD D. KINDER	216,492,170
GS CAPITAL PARTNERS V FUND, L.P.	16,227,644
GSCP V OFFSHORE KNIGHT HOLDINGS, L.P.	8,382,523
GSCP V GERMANY KNIGHT HOLDINGS, L.P.	643,371
GS CAPITAL PARTNERS V INSTITUTIONAL, L.P.	5,564,682
GS CAPITAL PARTNERS VI FUND, L.P.	15,764,853
GSCP VI OFFSHORE KNIGHT HOLDINGS, L.P.	13,112,651
GSCP VI GERMANY KNIGHT HOLDINGS, L.P.	560,283
GS CAPITAL PARTNERS VI PARALLEL, L.P.	4,335,066
GOLDMAN SACHS KMI INVESTORS, L.P.	16,886,427
GSCP KMI INVESTORS, L.P.	23,245,979
GSCP KMI INVESTORS OFFSHORE, L.P.	3,365,816
GS INFRASTRUCTURE KNIGHT HOLDINGS, L.P.	19,227,228
GS INSTITUTIONAL INFRASTRUCTURE PARTNERS I, L.P.	724,828
GS GLOBAL INFRASTRUCTURE PARTNERS I, L.P.	6,784,786
HIGHSTAR II KNIGHT ACQUISITION SUB, L.P.	3,156,297
HIGHSTAR III KNIGHT ACQUISITION SUB, L.P.	20,743,460
HIGHSTAR KNIGHT PARTNERS, L.P.	20,239,484
HIGHSTAR KMI BLOCKER LLC	41,131,509
CARLYLE PARTNERS IV KNIGHT, L.P.	54,536,189
CP IV COINVESTMENT, L.P.	5,011,383
CARLYLE ENERGY COINVESTMENT III, L.P.	176,040
CARLYLE/RIVERSTONE KNIGHT INVESTMENT PARTNERSHIP, L.P.	20,123,490
C/R KNIGHT PARTNERS, L.P.	29,773,786
C/R ENERGY III KNIGHT NON-U.S. PARTNERSHIP, L.P.	8,647,642
RIVERSTONE ENERGY COINVESTMENT III, L.P.	826,614

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Annex D

FORM OF

WARRANT AGREEMENT

Dated as of [ ]

between

KINDER MORGAN, INC.

and

[ ],

as Warrant Agent

Warrants for

Common Stock

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WARRANT AGREEMENT (this "Agreement"), dated as of [ ], 201[ ], between Kinder Morgan, Inc., a Delaware corporation (the "Company"), and [ ], a [ ], as warrant agent (the "Warrant Agent").

WHEREAS, the Company, Sherpa Merger Sub, Inc., a Delaware corporation, Sherpa Acquisition, LLC, a Delaware limited liability company, Sirius Merger Corporation, a Delaware corporation, Sirius Holdings Merger Corporation, a Delaware corporation, and El Paso Corporation, a Delaware corporation ("El Paso"), entered into an Agreement and Plan of Merger, dated as of October 16, 2011 (the "Merger Agreement"), providing for, among other things, the acquisition of El Paso by the Company through the consummation of the Transactions (as defined in the Merger Agreement), the result of which will include El Paso being a wholly owned subsidiary of the Company;

WHEREAS, in partial consideration of the merger and other transactions contemplated by the Merger Agreement, the Company has agreed to issue warrants (each, a "Warrant" and collectively, the "Warrants") to purchase shares of Class P common stock, par value $0.01 per share, of the Company (the "Common Stock"), to the stockholders of El Paso;

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, transfer, exchange, replacement, cancellation and exercise of the Warrants; and

WHEREAS, the Company desires to provide for the form and provisions of the Warrants, the terms upon which the Warrants shall be issued and exercised and the respective rights and obligations of the Company, the Warrant Agent and the registered owners of the Warrants (each, a "Holder" and collectively, the "Holders").

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration given to each party hereto, the receipt of which is hereby acknowledged, the Company and the Warrant Agent agree as follows:

ARTICLE I

ISSUANCE AND EXERCISE OF WARRANTS

SECTION 1.1 *Form of Warrant.* Each Warrant shall be evidenced by a certificate substantially in the form attached hereto as **Exhibit A** (each, a "Warrant Certificate" and collectively, "Warrant Certificates"). Each Warrant Certificate shall have such insertions as are required or permitted by this Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as may be required to comply with this Agreement, any applicable law or any rule of any securities exchange on which the Warrants may be listed. Each Warrant Certificate shall be executed on behalf of the Company by its Chairman of the Board of Directors, Chief Executive Officer, Chief Financial Officer or one of its Executive Vice Presidents, under its corporate seal reproduced thereon and attested by its Secretary or an Assistant Secretary. The signature of any such officers on the Warrant Certificates may be manual or facsimile. Warrant Certificates bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any one of them shall have ceased to hold such offices prior to the delivery of such Warrants or did not hold such offices on the date of this Agreement.

SECTION 1.2 *Countersignature of Warrants.* Each Warrant Certificate shall be countersigned by the Warrant Agent (or any successor to the Warrant Agent then acting as warrant agent under this Agreement) by manual or facsimile signature and shall not be valid for any purpose unless and until so countersigned. Warrant Certificates may be countersigned and delivered, notwithstanding the fact that the persons or any one of them who countersigned the Warrants shall have ceased to be proper signatories prior to the delivery of such Warrants or were not proper signatories on the date of this Agreement. Each Warrant Certificate shall be dated as of the date of its countersignature by the Warrant Agent. The Warrant Agent s countersignature shall be conclusive evidence that the Warrant Certificate so countersigned has been duly authenticated and issued under this Agreement.

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SECTION 1.3 *Exercise Number; Exercise Price.* Each Warrant initially entitles its Holder to purchase from the Company one (1) (the Exercise Number) share of Common Stock (such share or shares of Common Stock issued or issuable upon exercise of any Warrant or Warrants, each, a Warrant Share and collectively, the Warrant Shares) for a purchase price per share of Common Stock of $40.00 (the Exercise Price). The Exercise Number and the Exercise Price are subject to adjustment as provided in Article II, and all references to Exercise Number and Exercise Price in this Agreement shall be deemed to include any such adjustment or series of adjustments.

SECTION 1.4 *Term of Warrants.* All or a portion of the Warrants are exercisable by the Holder at any time and from time to time on or after the date of this Agreement until 5:00 p.m., New York City time, on the five (5)-year anniversary of the date of this Agreement (the Expiration Date).

SECTION 1.5 *Exercise of Warrants.* A Warrant may be exercised by surrender of the Warrant Certificate or Certificates evidencing such Warrant to be exercised and by delivery to the Warrant Agent (or to such other office or agency of the Company in the United States as the Company may designate by notice in writing to the Holders pursuant to Section 4.1) a notice of exercise in the form attached hereto as **Exhibit B**, duly completed and signed, which signature shall be guaranteed by a member of a recognized guarantee medallion program, together with payment of the Exercise Price for the Warrant Shares thereby purchased in accordance with Section 1.6. As promptly as practicable after receiving a notice of exercise to purchase Warrant Shares, the Warrant Agent shall notify the Company.

SECTION 1.6 *Payment of Exercise Price.* Payment of the aggregate Exercise Price for all Warrant Shares purchased may be made, at the option of the Holder, either (a) in cash or by certified or official bank check payable to the Warrant Agent or (b) by delivering a written direction to the Warrant Agent that the Holder desires to exercise the Warrants pursuant to a cashless exercise, in which case the Holder will receive a number of Warrant Shares that is equal to the aggregate number of Warrant Shares for which the Warrants are being exercised less the number of Warrant Shares that have an aggregate Market Price on the trading day on which such Warrants are exercised that is equal to the aggregate Exercise Price for such Warrant Shares. For the avoidance of doubt, if Warrants are exercised such that the aggregate Exercise Price would exceed the aggregate value (as measured by the Market Price) of the Warrant Shares issuable upon exercise, no amount shall be due and payable by the Holder to the Company, and such exercise shall be null and void and no Warrant Shares shall thereupon be issued and the Warrants shall continue in effect.

SECTION 1.7 *Registry of Warrants.* The Company or an agent duly appointed by the Company (which initially shall be the Warrant Agent) shall maintain a registry showing the names and addresses of the respective Holders and the date and number of Warrants evidenced on the face of each of the Warrant Certificates. Except as otherwise provided in this Agreement or in the Warrant Certificate, the Company and the Warrant Agent may deem and treat any Person whose name a Warrant Certificate is registered in the registry as the absolute owner of such Warrant Certificate.

SECTION 1.8 *Exchange of Warrant Certificates.* Each Warrant Certificate may be exchanged for another Warrant Certificate or Certificates of like tenor and representing the same aggregate number of Warrants. Any Holder desiring to exchange a Warrant Certificate or Certificates shall deliver a written request to the Warrant Agent and shall properly endorse and surrender the Warrant Certificate or Certificates to be so exchanged. Thereupon, the Warrant Agent shall countersign and deliver to the Holder a new Warrant Certificate or Certificates, as so requested, in such name or names as such Holder shall designate.

SECTION 1.9 *Cancellation of Warrant Certificates.* If and when any Warrant Certificate has been exercised in full, the Warrant Agent shall promptly cancel and destroy such Warrant Certificate following its receipt from the Holder. Upon exercise of a Warrant Certificate in part and not in full, the Warrant Agent shall issue and deliver or shall cause to be issued and delivered to the Holder a new Warrant Certificate or Certificates evidencing the Holder s remaining Warrants. The Warrant Agent is hereby irrevocably authorized to countersign

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and deliver such required new Warrant Certificate or Certificates, and the Company, whenever requested by the Warrant Agent, shall supply the Warrant Agent with Warrant Certificates duly executed on behalf of the Company for such purpose. The Warrant Agent and no one else may cancel and destroy Warrant Certificates surrendered for transfer, exchange, replacement, cancellation or exercise. The Warrant Agent must deliver a certificate of such destruction and cancellation (or, if requested by the Company, the cancelled Warrant Certificates) to the Company. The Company may not issue new Warrant Certificates to replace cancelled Warrant Certificates that have been exercised or purchased by it.

SECTION 1.10 *No Fractional Shares or Scrip.* No fractional Warrant Shares or scrip representing fractional Warrant Shares shall be issued upon any exercise of Warrants. In lieu of any fractional Warrant Shares that would otherwise be issued to a Holder upon exercise of any Warrants, such Holder shall receive a cash payment equal to the Market Price of the Common Stock on the trading day on which such Warrants are exercised representing such fractional Warrant Share.

SECTION 1.11 *Lost, Stolen, Destroyed or Mutilated Warrants.* Upon receipt by the Company of proof reasonably satisfactory to it of the loss, theft, destruction or mutilation of any Warrant Certificate and, if requested, an indemnity or bond, the Company shall deliver or shall cause to be delivered, in lieu of such lost, stolen, destroyed or mutilated Warrant Certificate, a new Warrant Certificate of like tenor and representing the same aggregate number of Warrants as provided for in such lost, stolen, destroyed or mutilated Warrant Certificate.

SECTION 1.12 *Transferability and Assignment.* At the option of the Holder thereof, the Warrants and all rights under the Warrant Certificate may be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, by the registered Holder or by duly authorized attorney, and one or more new Warrant Certificates shall be made and delivered and registered in the name of one or more transferees, upon surrender in accordance with Section 1.5 and upon compliance with all applicable laws.

SECTION 1.13 *Issuance of Warrant Certificates.* When any Holder, transferee of a Holder or other designee of a Holder is entitled to receive a new or replacement Warrant Certificate, whether pursuant to Section 1.8, 1.9, 1.11 or 1.12, the Company shall issue or shall cause to be issued such new or replacement Warrant Certificate within a reasonable time, not to exceed three (3) business days. The Company shall supply the Warrant Agent with Warrant Certificates duly executed on behalf of the Company for the purpose of issuing any new or replacement Warrant Certificates, and the Warrant Agent shall countersign such Warrant Certificates.

SECTION 1.14 *Issuance of Warrant Shares.* Upon the exercise of any Warrants, the Company shall deliver or shall cause to be delivered the number of full Warrant Shares to which such Holder shall be entitled, together with any cash to which such Holder shall be entitled in respect of fractional Warrant Shares pursuant to Section 1.10, within a reasonable time, not to exceed three (3) business days. All Warrant Shares shall be issued in such name or names as the exercising Holder may designate and delivered to the exercising Holder or its nominee or nominees.

SECTION 1.15 *Charges, Taxes and Expenses.* The Company shall pay all documentary stamp taxes, if any, attributable to the initial issuance of Warrant Shares upon the exercise of Warrants; provided, however, the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issue or delivery of any Warrants or certificates (if any) for Warrant Shares in a name other than that of the registered holder of such Warrants.

SECTION 1.16 *Issued Warrant Shares.* The Company hereby represents and warrants that all Warrant Shares issued in accordance with the terms of this Agreement will be duly and validly authorized and issued, fully paid and nonassessable and free from all taxes, liens and charges (other than liens or charges created by a Holder, income and franchise taxes incurred in connection with the exercise of the Warrant or taxes in respect of any transfer occurring contemporaneously therewith). The Company agrees that the Warrant Shares so issued

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will be deemed to have been issued to a Holder as of the close of business on the date on which the Warrants were duly exercised, notwithstanding that the stock transfer books of the Company may then be closed or certificates (if any) representing such Warrant Shares may not be actually delivered on such date.

SECTION 1.17 *Reservation of Sufficient Warrant Shares.* There have been reserved, and the Company shall at all times through the Expiration Date keep reserved, out of its authorized but unissued Common Stock, solely for the purpose of the issuance of Warrant Shares in accordance with the terms of this Agreement, a number of shares of Common Stock sufficient to provide for the exercise of the rights of purchase represented by the outstanding Warrants. The transfer agent for the Common Stock and every subsequent transfer agent for any shares of the Company s capital stock issuable upon the exercise of any of the rights of purchase aforesaid shall be irrevocably authorized and directed at all times to reserve such number of authorized shares as shall be required for such purpose. The Company shall supply such transfer agents with duly executed stock certificates for such purposes and shall provide or otherwise make available any cash that may be payable upon exercise of Warrants in respect of fractional Warrant Shares pursuant to Section 1.10. The Company shall furnish such transfer agent with a copy of all notices of adjustments and certificates related thereto, transmitted to each Holder pursuant to Section 4.1.

SECTION 1.18 *Registration and Listing*. The Company shall register or shall cause to be registered any and all shares of its Common Stock (including the Warrant Shares) and all the Warrants under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, and the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the Exchange Act), and the Company shall use commercially reasonable efforts to maintain such registration of such shares of its Common Stock (including the Warrant Shares) and all the Warrants. The Company shall use reasonable best efforts to (a) procure, or cause to be procured, at its sole expense, the listing of the Warrant Shares and the Warrants, subject to issuance or notice of issuance, on the New York Stock Exchange or, if prior to the closing of the Merger the New York Stock Exchange will not approve the listing of the Warrants on the New York Stock Exchange, then on the NASDAQ Stock Exchange or, if prior to the closing of the Merger the NASDAQ Stock Exchange will not approve the listing of the Warrants on the NASDAQ Stock Exchange, another stock exchange reasonably agreed by the Company and El Paso, and (b) maintain such listings at all times until the Expiration Date. The Company shall use reasonable best efforts to ensure that the Warrant Shares and the Warrants may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange on which such shares of its Common Stock (including the Warrant Shares) and the Warrants are listed or traded.

SECTION 1.19 *No Impairment.* The Company will not, and the Company will cause its subsidiaries not to, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by the Company under this Agreement. The Company shall at all times in good faith assist in the carrying out of all provisions of this Agreement and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holders.

SECTION 1.20 *CUSIP Numbers.* The Company, in issuing the Warrants, may use CUSIP numbers (if then generally in use) and, if so, the Warrant Agent shall use CUSIP numbers in notices as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Warrant Certificates or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Warrant Certificates.

SECTION 1.21 *Purchase of Warrants by the Company; Cancellation*. The Company shall have the right, except as limited by law, other agreements or as provided herein, to purchase or otherwise acquire Warrants at such times, in such manner and for such consideration as it and the applicable Holder may deem appropriate. In the event the Company shall purchase or otherwise acquire Warrants, the same shall thereupon be delivered to the Warrant Agent and retired and, for the avoidance of doubt, if the approval of Holders is required to take any action, the Company s (or any of its subsidiaries or affiliates) ownership in any Warrants shall not be considered in calculating whether the requisite number of Warrants have approved such action.

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SECTION 1.22 *No Rights as Stockholders.* A Warrant shall not, prior to its exercise, confer upon its Holder or such Holder s transferee, in such Holder s or such transferee s capacity as a Warrant Holder, the right to vote or receive dividends, or consent or receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the Company or any other matter, or any rights whatsoever as stockholders of the Company.

ARTICLE II

ANTIDILUTION PROVISIONS

SECTION 2.1 *Adjustments and Other Rights.* The Exercise Price and the Exercise Number shall be subject to adjustment from time to time as provided by this Article II; provided, however, that if more than one section of this Article II is applicable to a single event, the section shall be applied that produces the largest adjustment, and no single event shall cause an adjustment under more than one section of this Article II so as to result in duplication.

SECTION 2.2 *Stock Splits, Subdivisions, Reclassifications or Combinations.* If the Company shall (a) declare and pay a dividend or make a distribution on its Common Stock in shares of Common Stock, (b) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares, or (c) combine or reclassify the outstanding shares of Common Stock into a smaller number of shares, the Exercise Number at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted by multiplying the Exercise Number effective immediately prior to such event by a fraction (x) the numerator of which shall be the total number of outstanding shares of Common Stock immediately after such event and (y) the denominator of which shall be the total number of outstanding shares of Common Stock immediately prior to such event. In such event, the Exercise Price per share of Common Stock in effect immediately prior to the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted by multiplying such Exercise Price by a fraction (i) the numerator of which shall be the Exercise Number immediately prior to such adjustment and (ii) the denominator of which shall be the new Exercise Number determined pursuant to the immediately preceding sentence.

SECTION 2.3 *Other Distributions.* If the Company shall fix a record date for the making of a distribution to all holders of shares of its Common Stock of securities, evidences of indebtedness, assets, cash, rights or warrants (excluding Ordinary Cash Dividends, dividends of its Common Stock and other dividends or distributions referred to in Section 2.2), in each such case, the Exercise Price in effect prior to such record date shall be reduced immediately upon occurrence of the record date to the price determined by multiplying the Exercise Price in effect immediately prior to the reduction by the quotient of (x) the Market Price of the Common Stock on the last trading day preceding the first date on which the Common Stock trades regular way on the principal national securities exchange on which the Common Stock is listed or admitted to trading without the right to receive such distribution, minus the amount of cash and/or the Fair Market Value of the securities, evidences of indebtedness, assets, rights or warrants to be so distributed in respect of one share of Common Stock (such subtracted amount and/or Fair Market Value, the Per Share Fair Market Value) divided by (y) such Market Price on such date specified in clause (x); such adjustment shall be made successively whenever such a record date is fixed. In such event, the Exercise Number shall be increased to the number obtained by multiplying the Exercise Number immediately prior to such adjustment by the quotient of (x) the Exercise Price in effect immediately prior to the distribution giving rise to this adjustment divided by (y) the new Exercise Price determined in accordance with the immediately preceding sentence. In the case of adjustment for a cash dividend that is, or is coincident with, a regular quarterly cash dividend, the Per Share Fair Market Value would be reduced by the per share amount of the portion of the cash dividend that would constitute an Ordinary Cash Dividend.

SECTION 2.4 *Certain Repurchases of Common Stock.* If the Company effects a Pro Rata Repurchase of Common Stock, then the Exercise Price shall be reduced to the price determined by multiplying the Exercise Price in effect immediately prior to the Effective Date of such Pro Rata Repurchase by a fraction of which (a) the

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numerator shall be (i) the product of (x) the number of shares of Common Stock outstanding immediately before such Pro Rata Repurchase and (y) the Market Price of a share of Common Stock on the trading day immediately preceding the first public announcement by the Company or any of its Affiliates of the intent to effect such Pro Rata Repurchase, minus (ii) the aggregate purchase price of the Pro Rata Repurchase, and of which (b) the denominator shall be the product of (i) the number of shares of Common Stock outstanding immediately prior to such Pro Rata Repurchase minus the number of shares of Common Stock so repurchased and (ii) the Market Price per share of Common Stock on the trading day immediately preceding the first public announcement by the Company or any of its Affiliates of the intent to effect such Pro Rata Repurchase. In such event, the Exercise Number shall be increased to the number obtained by multiplying the Exercise Number immediately prior to such adjustment by the quotient of (x) the Exercise Price in effect immediately prior to the Pro Rata Repurchase giving rise to this adjustment divided by (y) the new Exercise Price determined in accordance with the immediately preceding sentence. For the avoidance of doubt, no increase to the Exercise Price or decrease in the Exercise Number shall be made pursuant to this Section 2.4.

SECTION 2.5 *Business Combinations or Reclassifications of Common Stock.* In case of any Business Combination or reclassification of Common Stock (other than a reclassification of Common Stock referred to in Section 2.2), a Holder s right to receive shares upon exercise of a Warrant shall be converted into the right to exercise such Warrant to acquire the number of shares of stock or other securities or property (including cash) that the Common Stock issuable (at the time of such Business Combination or reclassification) upon exercise of such Warrant immediately prior to such Business Combination or reclassification would have been entitled to receive upon consummation of such Business Combination or reclassification; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the Holder shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to such Holder s right to exercise a Warrant in exchange for any shares of stock or other securities or property pursuant to this section. In determining the kind and amount of stock, securities or the property receivable upon exercise of a Warrant following the consummation of such Business Combination, if the holders of Common Stock have the right to elect the kind or amount of consideration receivable upon consummation of such Business Combination, then the consideration that a Holder shall be entitled to receive upon exercise shall be deemed to be the types and amounts of consideration received by the majority of all holders of the shares of Common Stock that affirmatively make an election (or of all such holders if none make an election). For purposes of determining any amount to be withheld in the case of a cashless exercise pursuant to Section 1.6 from stock, securities or the property that would otherwise be delivered to a Holder upon exercise of Warrants following any Business Combination, the amount of such stock, securities or property to be withheld shall have a Market Price equal to the aggregate Exercise Price as to which such Warrants are so exercised, based on the fair market value of such stock, securities or property on the trading day on which such Warrants are exercised and the Notice of Exercise is delivered to the Warrant Agent; provided, however, that in the case of any property that is not a security, the Market Price of such property shall be deemed to be its fair market value as determined in good faith by the Board of Directors in reliance on an opinion of a nationally recognized independent investment banking firm retained by the Company for this purpose; provided, further, that if making such determination requires the conversion of any currency other than U.S. dollars into U.S. dollars, such conversion shall be done in accordance with customary procedures based on the rate for conversion of such currency into U.S. dollars displayed on the relevant page by Bloomberg L.P. (or any successor or replacement service) on or by 4:00 p.m., New York City time, on such exercise date.

SECTION 2.6 *Rounding of Calculations; Minimum Adjustments*. All calculations under this Article II shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Article II to the contrary notwithstanding, no adjustment in the Exercise Price or the Exercise Number shall be made if the amount of such adjustment would be less than $0.01 or one-tenth (1/10th) of a share of Common Stock, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate $0.01 or 1/10th of a share of Common Stock, or more, or on exercise of a Warrant if it shall earlier occur.

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SECTION 2.7 *Timing of Issuance of Additional Common Stock Upon Certain Adjustments.* In any case in which the provisions of this Article II shall require that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (a) issuing to a Holder of Warrants exercised after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such exercise by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such exercise before giving effect to such adjustment and (b) paying to such Holder any amount of cash in lieu of a fractional share of Common Stock; provided, however, that the Company upon request shall deliver to such Holder a due bill or other appropriate instrument evidencing such Holder s right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment, subject to any retroactive readjustment in accordance with Section 2.8(b).

SECTION 2.8 *Other Events; Provisions of General Applicability.*

(a) Neither the Exercise Price nor the Exercise Number shall be adjusted in the event of (i) a change in the par value of the Common Stock, (ii) a change in the jurisdiction of incorporation of the Company or (iii) any conversion of shares of any other class of common stock of the Company outstanding as of the date of this Agreement into shares of Common Stock in accordance with the conversion mechanisms set forth in the Company's certificate of incorporation as of the date of this Agreement.

(b) In the event that any dividend or distribution described in this Article II is not so made, the Exercise Price and the Exercise Number then in effect shall be readjusted, effective as of the date when the Board of Directors determines not to distribute such shares, evidences of indebtedness, assets, rights, cash or warrants, as the case may be, to the Exercise Price and the Exercise Number that would then be in effect if such record date had not been fixed.

SECTION 2.9 *Statement Regarding Adjustments.* Whenever the Exercise Price or the Exercise Number shall be adjusted as provided in this Article II, the Company shall forthwith file at the principal office of the Company a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the Exercise Number after such adjustment. The Company shall deliver to the Warrant Agent a copy of such statement and shall cause a copy of such statement to be sent or communicated to the Holders pursuant to Section 4.1.

SECTION 2.10 *Notice of Adjustment Event.* In the event that the Company shall propose to take any action of the type described in this Article II (but only if the action of the type described in this Article II would result in an adjustment in the Exercise Price or the Exercise Number or a change in the type of securities or property to be delivered upon exercise of a Warrant), the Company shall deliver to the Warrant Agent a notice and shall cause such notice to be sent or communicated to the Holders in the manner set forth in Section 4.1, which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto as shall be reasonably necessary to indicate the effect on the Exercise Price and the number, kind or class of shares or other securities or property which shall be deliverable upon exercise of a Warrant. In the case of any action which would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed, and in case of all other action, such notice shall be given at least fifteen (15) days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

SECTION 2.11 *Proceedings Prior to Any Action Requiring Adjustment.* As a condition precedent to the taking of any action which would require an adjustment pursuant to this Article II, the Company shall take any action which may be necessary, including obtaining regulatory, New York Stock Exchange, NASDAQ Stock Market or other applicable national securities exchange or stockholder approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all Warrant Shares that a Holder is entitled to receive upon exercise of a Warrant pursuant to this Article II.

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SECTION 2.12 *Adjustment Rules.* Any adjustments pursuant to this Article II shall be made successively whenever an event referred to herein shall occur. If an adjustment in Exercise Price made under this Agreement would reduce the Exercise Price per share of Common Stock to an amount below par value of the Common Stock, then such adjustment in Exercise Price made under this Agreement shall reduce the Exercise Price per share of Common Stock to the par value of the Common Stock.

SECTION 2.13 *Prohibited Actions.* The Company agrees that it will not take any action which would entitle a Holder to an adjustment of the Exercise Price if the total number of shares of Common Stock issuable after such action upon exercise of the Warrants, together with all shares of Common Stock then outstanding and all shares of Common Stock then issuable upon the exercise of all outstanding options, warrants, conversion and other rights, would exceed the total number of shares of Common Stock then authorized by its certificate of incorporation.

SECTION 2.14 *Adjustment to Warrant Certificate.* The form of Warrant Certificate need not be changed because of any adjustment made pursuant to the Warrant Certificate, and Warrant Certificates issued after such adjustment may state the same Exercise Price and the same Exercise Number as are stated in the Warrant Certificates initially issued pursuant to this Agreement. The Company, however, may at any time in its sole discretion make any change in the form of Warrant Certificate that it may deem appropriate to give effect to such adjustments and that does not affect the substance of the Warrant Certificate, and any Warrant Certificate thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

ARTICLE III

WARRANT AGENT

SECTION 3.1 *Appointment of Warrant Agent.* The Company hereby appoints the Warrant Agent to act as agent for the Company with respect to the Warrants and in accordance with the provisions of this Agreement, and the Warrant Agent hereby accepts such appointment.

SECTION 3.2 *Liability of Warrant Agent.* The Warrant Agent shall act under this Agreement solely as agent, and its duties shall be determined solely by the provisions of this Agreement. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in connection with this Agreement, except for its own willful misconduct, gross negligence or bad faith.

SECTION 3.3 *Performance of Duties.* The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty under this Agreement either itself or by or through its attorneys or agents (which shall not include its employees).

SECTION 3.4 *Disposition of Proceeds on Exercise of Warrants.* The Warrant Agent shall account as promptly as practicable to the Company with respect to Warrants exercised and shall concurrently pay to the Company all monies received by the Warrant Agent for the purchase of Warrant Shares through the exercise of such Warrants. If the Warrant Agent shall receive any notice, demand or other document addressed to the Company by a Holder with respect to the Warrants, the Warrant Agent shall as promptly as practicable forward such notice, demand or other document to the Company.

SECTION 3.5 *Reliance on Counsel.* The Warrant Agent may consult at any time with legal counsel satisfactory to it (who may be counsel to the Company), and the Warrant Agent shall incur no liability or responsibility for any action taken, suffered or omitted by it under this Agreement in reasonable reliance on and in accordance with the advice of such counsel.

SECTION 3.6 *Reliance on Documents.* The Warrant Agent will not incur any liability or responsibility for any action taken in reasonable reliance on any notice, written statement, resolution, waiver, consent, order, certificate or other paper, document or instrument reasonably believed by it to be genuine and to have been

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signed, sent, presented or made by the proper party or parties. The statements contained herein and in the Warrants shall be taken as statements of the Company, and the Warrant Agent assumes no responsibility for the correctness of any of the same, except as set forth by the Warrant Agent or as evidenced by action taken by the Warrant Agent.

SECTION 3.7 *Validity of Agreement.* The Warrant Agent shall not be responsible for the validity, execution or delivery of this Agreement (except the due execution of this Agreement by the Warrant Agent) or for the validity, execution or delivery of any Warrant (except the due countersignature of such Warrant Certificate by the Warrant Agent), and the Warrant Agent shall not by any act under this Agreement be deemed to make any representation or warranty as to the authorization or reservation of any Warrant Shares (or other stock) to be issued pursuant to this Agreement or any Warrant, or as to whether any Warrant Shares (or other stock) will, pursuant to this Agreement or any Warrant, when issued, be validly issued, fully paid and nonassessable.

SECTION 3.8 *Instructions from Company.* The Warrant Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties under this Agreement from the Chairman of the Board of Directors, Chief Executive Officer, Chief Financial Officer, one of its Executive Vice Presidents or Vice Presidents, the Treasurer or the Controller of the Company, and to make an application to such officers for advice or instructions in connection with its duties, and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in reasonable reliance and in accordance with instructions of any such officer. The Warrant Agent shall not be liable for any action taken by, or omission of any action by, the Warrant Agent in accordance with a proposal included in any such application to such officers on or after the date specified in such application (which date shall not be less than five (5) business days after the date any such officer of the Company actually receives such application, unless any such officer shall have consented in writing to an earlier date) unless, prior to taking any such action (or the effective date in the case of an omission), the Warrant Agent shall have received written instructions in response to such application specifying the action to be taken or omitted.

SECTION 3.9 *Proof of Actions Taken.* Whenever in the performance of its duties under this Agreement the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering or omitting any action under this Agreement, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed conclusively to be proved and established by a certificate signed by the Chairman of the Board of Directors, Chief Executive Officer, Chief Financial Officer, one of its Executive Vice Presidents or Vice Presidents, the Treasurer or the Controller of the Company and delivered to the Warrant Agent, and such certificate shall be full authorization to the Warrant Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon any such certificate.

SECTION 3.10 *Compensation.* The Company agrees to pay the Warrant Agent reasonable compensation for all services rendered by the Warrant Agent in the performance of its duties under this Agreement, to reimburse the Warrant Agent for all reasonable expenses, taxes and governmental charges and other charges incurred by the Warrant Agent in the performance of its duties under this Agreement.

SECTION 3.11 *Indemnity.* The Company shall indemnify the Warrant Agent and save it harmless from and against any and all liabilities, including judgments, costs and counsel fees, for anything done or omitted by the Warrant Agent in the performance of its duties under this Agreement, except as a result of the Warrant Agent s willful misconduct, gross negligence or bad faith. The Warrant Agent shall indemnify the Company and save it harmless from and against any and all liabilities, including judgments, costs and counsel fees, for anything arising out of or attributable to the Warrant Agent s refusal or failure to comply with the terms of this Agreement or which arise out of the Warrant Agent s willful misconduct, gross negligence or bad faith; provided, however, that the Warrant Agent s aggregate liability under this Agreement with respect to, arising from or arising in connection with this Agreement, whether in contract, in tort or otherwise, is limited to and shall not exceed the

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amounts paid under this Agreement by the Company to the Warrant Agent as fees and charges, but not including reimbursable expenses. The Warrant Agent shall notify the Company promptly of any claim for which it may seek indemnity, and the Company shall notify the Warrant Agent promptly of any claim for which it may seek indemnity.

SECTION 3.12 *Legal Proceedings.* The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or any one or more Holders shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses that may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. All rights of action under this Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrants or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as warrant agent, and any recovery of judgment shall be for the ratable benefit of the Holders, as their respective rights or interests may appear.

SECTION 3.13 *Other Transactions in Securities of Company.* The Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company, or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing in this Agreement shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

SECTION 3.14 *Identity of Transfer Agent.* Upon the appointment of any subsequent transfer agent for the Common Stock, or any other shares of the Company s capital stock issuable upon the exercise of the Warrants, the Company shall file with the Warrant Agent a statement setting forth the name and address of such subsequent transfer agent.

SECTION 3.15 *Company to Provide and Maintain Warrant Agent.* The Company agrees for the benefit of the Holders that there shall at all times be a Warrant Agent under this Agreement until all the Warrants have been exercised or cancelled or are no longer exercisable.

SECTION 3.16 *Resignation and Removal.* The Warrant Agent may at any time resign by giving written notice to the Company of such intention on its part, specifying the date on which its desired resignation shall become effective. The Warrant Agent under this Agreement may be removed at any time by the filing with it of an instrument in writing signed by or on behalf of the Company and specifying such removal and the date when it shall become effective. Any removal under this Section 3.16 shall take effect upon the appointment by the Company as hereinafter provided of a successor Warrant Agent (which shall be (a) a bank or trust company, (b) organized under the laws of the United States or one of the states thereof, (c) authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers, (d) having a combined capital and surplus of at least $50,000,000 (as set forth in its most recent reports of condition published pursuant to law or to the requirements of any United States federal or state regulatory or supervisory authority) and (e) having an office in the Borough of Manhattan, The City of New York) and the acceptance of such appointment by such successor Warrant Agent.

SECTION 3.17 *Company to Appoint Successor.* If at any time the Warrant Agent shall resign, shall be removed, shall become incapable of acting, shall be adjudged bankrupt or insolvent or shall commence a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or under any other applicable federal or state bankruptcy, insolvency or similar law or shall consent to the appointment of or the taking possession by a receiver, custodian, liquidator, assignee, trustee, sequestrator (or other similar official) of the Warrant Agent or its property or affairs, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of

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any such action, or a decree or order for relief by a court having jurisdiction in the premises shall have been entered in respect of the Warrant Agent in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law, or a decree or order by a court having jurisdiction in the premises shall have been entered for the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator (or similar official) of the Warrant Agent or of its property or affairs, or any public officer shall take charge or control of the Warrant Agent or of its property or affairs for the purpose of rehabilitation, conservation, winding up or liquidation, a successor Warrant Agent, qualified as aforesaid, shall be appointed by the Company by an instrument in writing, filed with the successor Warrant Agent. In the event that a successor Warrant Agent is not appointed by the Company, a successor Warrant Agent, qualified as aforesaid, may be appointed by the Warrant Agent or the Warrant Agent may petition a court to appoint a successor Warrant Agent. Upon the appointment as aforesaid of a successor Warrant Agent and acceptance by the successor Warrant Agent of such appointment, the Warrant Agent shall cease to be Warrant Agent under this Agreement; provided, however, that in the event of the resignation of the Warrant Agent under this Section 3.17, such resignation shall be effective on the earlier of (i) the date specified in the Warrant Agent s notice of resignation and (ii) the appointment and acceptance of a successor Warrant Agent under this Agreement.

SECTION 3.18 *Successor to Expressly Assume Duties.* Any successor Warrant Agent appointed under this Agreement shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment under this Agreement, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the rights and obligations of such predecessor with like effect as if originally named as the Warrant Agent under this Agreement, and such predecessor, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor, as the Warrant Agent under this Agreement.

SECTION 3.19 *Successor by Merger.* Any entity into which the Warrant Agent may be merged or consolidated, or any entity resulting from any merger or consolidation to which the Warrant Agent shall be a party, or any entity to which the Warrant Agent shall sell or otherwise transfer all or substantially all of its assets and business, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided, however, that it shall be qualified as aforesaid.

ARTICLE IV

MISCELLANEOUS

SECTION 4.1 *Notices.* Any notice pursuant to this Agreement by the Company or by any Holder to the Warrant Agent, or by the Warrant Agent or by any Holder to the Company, shall be in writing and shall be delivered in person or by facsimile transmission, or mailed first class, postage prepaid, (a) to the Company, at its offices at 500 Dallas Street, Suite 1000, Houston, Texas 77002, Attention: General Counsel, or (b) to the Warrant Agent, at its offices at [ ]. Each party to this Agreement may from time to time change the address to which notices to it are to be delivered or mailed by notice to the other party. Any notice mailed pursuant to this Agreement by the Company or the Warrant Agent to the Holders shall be in writing and shall be mailed first class, postage prepaid, or otherwise delivered, to such Holders at their respective addresses on the registry of the Warrant Agent.

SECTION 4.2 *Supplements and Amendments.* The Company and the Warrant Agent may from time to time supplement or amend this Agreement without the approval of any Holder in order to cure any ambiguity or to correct or supplement any provision contained in this Agreement that may be defective or inconsistent with any other provision in this Agreement, or to make any other provisions in regard to matters or questions arising under this Agreement that the Company and the Warrant Agent may deem necessary or desirable; provided, however, that no such supplement or amendment to this Agreement shall be made that adversely affects the

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interests or rights of any of the Holders in any respect. Notwithstanding the foregoing, a supplement or amendment to this Agreement may be made by one or more substantially concurrent written instruments duly signed by the Holders of a majority of the then outstanding Warrants and delivered to the Company; provided, however, that the consent of each Holder affected thereby shall be required for any amendment pursuant to which: (a) the Exercise Price would be increased or the Exercise Number would be decreased (in each case, other than pursuant to adjustments in accordance with Article II), (b) the time period during which the Warrants are exercisable would be shortened or (c) the antidilution provisions set forth in Article II would be changed in such a way as to adversely affect such Holder. In determining whether the Holders of the required number of outstanding Warrants have approved any supplement or amendment to this Agreement, Warrants owned by the Company or its controlled Affiliates, if any, shall be disregarded and deemed not to be outstanding.

SECTION 4.3 *Successors.* All the covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of the respective successors and assigns of the Company or the Warrant Agent under this Agreement.

SECTION 4.4 *Rights Offering.* Prior to the Expiration Date, the Company shall not effect any rights offering for the sale of Common Stock to substantially all of the holders of Common Stock if the per share price payable in such rights offering is less than the Market Price on the trading day immediately prior to the pricing of such rights offering.

SECTION 4.5 *Governing Law; Jurisdiction.* **THIS AGREEMENT AND EACH WARRANT ISSUED UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICT OF LAWS. IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE WARRANTS, THE PARTIES HERETO AND EACH HOLDER IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED WITHIN THE COUNTY OF WILMINGTON, STATE OF DELAWARE. NOTICE MAY BE SERVED UPON THE COMPANY AT THE ADDRESS SET FORTH IN SECTION 4.1 AND UPON ANY HOLDER AT THE ADDRESS FOR SUCH HOLDER SET FORTH IN THE REGISTRY MAINTAINED BY THE COMPANY OR WARRANT AGENT PURSUANT TO SECTION 1.7. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO AND EACH HOLDER HEREBY UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR THE WARRANTS.**

SECTION 4.6 *Benefits of this Agreement.* This Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and the Holders of the Warrants. Nothing in this Agreement shall be construed to give to any Person other than the Company, the Warrant Agent and the Holders any legal or equitable right, remedy or claim under this Agreement.

SECTION 4.7 *Counterparts.* This Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 4.8 *Table of Contents; Headings.* The table of contents and headings of the Articles and Sections of this Agreement have been inserted for convenience of reference only, are not intended to be considered a part of this Agreement and shall not modify or restrict any of the terms or provisions of this Agreement.

SECTION 4.9 *Severability.* The provisions of this Agreement are severable, and if any clause or provision shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect in that jurisdiction only such clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Agreement in any jurisdiction.

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SECTION 4.10 *Availability of Agreement.* The Warrant Agent shall keep copies of this Agreement and any notices given or received under this Agreement available for inspection by the Holders during normal business hours at its principal office in New York. The Company shall supply the Warrant Agent from time to time with such numbers of copies of this Agreement as the Warrant Agent may request.

SECTION 4.11 *Saturdays, Sundays, Holidays, etc.* If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a business day, then such action may be taken or such right may be exercised on the next succeeding day that is a business day.

SECTION 4.12 *Definitions.* As used in this Agreement, the following terms having the meanings ascribed thereto below:

Affiliate means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with, such other Person. For purposes of this definition, control (including, with correlative meanings, the terms controlled by and under common control with) when used with respect to any Person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such Person, whether through the ownership of voting securities by contract or otherwise.

Agreement has the meaning set forth in the preamble.

Board of Directors means the board of directors of the Company, including any duly authorized committee thereof.

Business Combination means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company s stockholders.

business day means any day except Saturday, Sunday and (i) at any time when the Warrants are listed on the NASDAQ Stock Market or the New York Stock Exchange, any day on which the NASDAQ Stock Market or the New York Stock Exchange, as applicable, is authorized or required by law or other governmental actions to close or (ii) at any time when the Warrants are not listed on the NASDAQ Stock Market or the New York Stock Exchange, any day on which banking institutions in the State of New York are authorized or required by law or other governmental actions to close.

Common Stock has the meaning set forth in the recitals.

Company has the meaning set forth in the preamble.

El Paso has the meaning set forth in the recitals.

Exchange Act has the meaning set forth in Section 1.18.

Exercise Number has the meaning set forth in Section 1.3.

Exercise Price has the meaning set forth in Section 1.3.

Expiration Date has the meaning set forth in Section 1.4.

Fair Market Value means, with respect to any security or other property, the fair market value of such security or other property as determined by the Board of Directors, acting in good faith.

Holder and Holders has the meaning set forth in the recitals.

Issue Date means, with respect to a Warrant Certificate, the date set forth on such Warrant Certificate.

Market Price means, with respect to a particular security, on any given day, the last reported sale price regular way or, in case no such reported sale takes place on such day, the average of the last closing bid and ask prices regular way, in either case on the principal national securities exchange on which the applicable securities are listed or admitted to trading (the Principal Exchange), or if not listed or admitted

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to trading on any national securities exchange, the average of the closing bid and ask prices as furnished by two (2) members of the Financial Industry Regulatory Authority, Inc. selected from time to time by the Company for that purpose. Market Price shall be determined without reference to after hours or extended hours trading. If such security is not listed and traded in a manner that the quotations referred to above are available for the period required under this Agreement, the Market Price per share of Common Stock shall be deemed to be the fair market value per share of such security as determined in good faith by the Board of Directors in reliance on an opinion of a nationally recognized independent investment banking corporation retained by the Company for such purpose; provided, however, that if any such security is listed or traded solely on a non-U.S. market, such fair market value shall be determined by reference to the closing price of such security as of the end of the most recently ended business day in such market prior to the date of determination; provided, further, that if making such determination requires the conversion of any currency other than U.S. dollars into U.S. dollars, such conversion shall be done in accordance with customary procedures based on the rate for conversion of such currency into U.S. dollars displayed on the relevant page by Bloomberg L.P. (or any successor or replacement service) on or by 4:00 p.m., New York City time, on such exercise date. For the purposes of determining the Market Price of the Common Stock on the trading day preceding, on or following the occurrence of an event, (i) that trading day shall be deemed to commence immediately after the regular scheduled closing time of trading on the Principal Exchange or, if trading is closed at an earlier time, such earlier time and (ii) that trading day shall end at the next regular scheduled closing time, or if trading is closed at an earlier time, such earlier time (for the avoidance of doubt, and as an example, if the Market Price is to be determined as of the last trading day preceding a specified event and the closing time of trading on a particular day is 4:00 p.m. and the specified event occurs at 5:00 p.m. on that day, the Market Price would be determined by reference to such 4:00 p.m. closing price).

Merger Agreement has the meaning set forth in the recitals.

Ordinary Cash Dividends means a regular quarterly cash dividend on shares of Common Stock legally available therefor; provided, however, that Ordinary Cash Dividends shall not include any cash dividends paid subsequent to the Issue Date to the extent the aggregate per share dividends paid on the outstanding Common Stock in any quarter exceed (i) $0.50 per share of Common Stock in any quarter during the fiscal year ended December 31, 2012, (ii) $0.60 per share of Common Stock in any quarter during the fiscal year ended December 31, 2013, (iii) $0.70 per share of Common Stock in any quarter during the fiscal year ended December 31, 2014, (iv) $0.80 per share of Common Stock in any quarter during the fiscal year ended December 31, 2015, (v) $0.90 per share of Common Stock in any quarter during the fiscal year ended December 31, 2016 and (vi) $1.00 per share of Common Stock in any quarter during the fiscal year ended December 31, 2017, in each case, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

Per Share Fair Market Value has the meaning set forth in Section 2.3.

Person has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

Pro Rata Repurchase means any purchase of shares of Common Stock by the Company or any Affiliate thereof pursuant to (i) any tender offer or exchange offer made to substantially all holders of Common Stock subject to Section 13(e) or 14(e) of the Exchange Act or Regulation 14E promulgated thereunder or (ii) any other offer available to substantially all holders of Common Stock, in the case of both (i) and (ii), whether for cash, shares of Common Stock of the Company, other securities of the Company, evidences of indebtedness of the Company or any other Person or any other property (including, without limitation, shares of Common Stock, other securities or evidences of indebtedness of a subsidiary), or any combination thereof, effected while any Warrants are outstanding. The Effective Date of a Pro Rata Repurchase shall mean the date of acceptance of shares for purchase or exchange by the Company under any tender or exchange offer which is a Pro Rata Repurchase or the date of purchase with respect to any Pro Rata Repurchase that is not a tender or exchange offer.

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Subsidiary means any corporation, limited liability company, partnership, association, trust or other entity the accounts of which would be consolidated with those of such party in such party s consolidated financial statements if such financial statements were prepared in accordance with U.S. GAAP, as well as any other corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests or, in the case of a limited liability company, the managing member) are, as of such date, owned by such party or one or more Subsidiaries of such party or by such party and one or more Subsidiaries of such party. The term Subsidiary shall include Kinder Morgan Energy Partners, L.P.

trading day means (i) if the shares of Common Stock are not traded on any national or regional securities exchange or association or over-the-counter market, a business day or (ii) if the shares of Common Stock are traded on any national or regional securities exchange or association or over-the-counter market, a business day on which such relevant exchange or quotation system is scheduled to be open for business and on which the shares of Common Stock (x) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market for any period or periods aggregating one half hour or longer; and (y) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the shares of Common Stock. The term trading day with respect to any security other than the Common Stock shall have a correlative meaning based on the primary exchange or quotation system on which such security is listed or traded.

U.S. GAAP means United States generally accepted accounting principles.

Warrant and Warrants has the meaning set forth in the recitals.

Warrant Agent has the meaning set forth in the preamble.

Warrant Certificate and Warrant Certificates has the meaning set forth in Section 1.1.

Warrant Share and Warrant Shares has the meaning set forth in Section 1.3.

[Signature page follows]

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

KINDER MORGAN, INC.

By:
Name:
Title:

[_____],
as Warrant Agent

By:
Name:
Title:

[Signature Page to the Warrant Agreement]

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EXHIBIT A

VOID AFTER 5:00 P.M., New York City Time, [_____], 201[_]

Warrants to Purchase

[_____]

Shares of Class P Common Stock

KINDER MORGAN, INC.

COMMON STOCK PURCHASE WARRANTS

This certifies that, for value received, [_____] or registered assigns (the Holder), is entitled to purchase from Kinder Morgan, Inc., a Delaware corporation (the Company), at any time from 9:00 a.m., New York City time, on [_____], 201[ ] until 5:00 p.m., New York City time, on 201[_] (the Expiration Date), at the purchase price of $40.00 per share (the Exercise Price), the number of shares of Class P common stock, par value $0.01 per share, of the Company (the Common Stock), shown above. The number of shares purchasable upon exercise of the Common Stock Purchase Warrants (the Warrants) and the Exercise Price are subject to adjustment from time to time as set forth in the Warrant Agreement (as defined below).

The Warrants may be exercised in whole or in part by presentation of this Warrant Certificate with the Notice of Exercise on the reverse side hereof duly executed and simultaneous payment of the Exercise Price at the principal office of [_____] (the Warrant Agent). Payment of such price shall be made, at the option of the Holder, either (i) in cash or by certified or official bank check payable to the Warrant Agent or (ii) by delivering a written direction to the Warrant Agent that the Holder desires to exercise Warrants pursuant to a cashless exercise, in which case the Holder will receive a number of shares of Common Stock that is equal to the aggregate number of shares of Common Stock for which the Warrants are being exercised less the number of shares of Common Stock that have an aggregate Market Price (as defined in the Warrant Agreement) on the trading day on which such Warrants are exercised that is equal to the aggregate Exercise Price. The Exercise Price and the number of shares of Common Stock that may be purchased upon the exercise of the Warrants evidenced by this Warrant Certificate are subject to modification and adjustment in accordance with the terms of the Warrant Agreement.

This Warrant Certificate is issued under and in accordance with a Warrant Agreement, dated as of [_____], 201[_], by and between the Company and [_____] (the Warrant Agreement), and is subject to the terms and provisions contained in the Warrant Agreement, to all of which the Holder by acceptance hereof consents. A copy of the Warrant Agreement may be obtained by the Holder upon written request to the Company or at the office of the Warrant Agent.

Upon any partial exercise of the Warrants evidenced by this Warrant Certificate, there shall be countersigned and issued to the Holder a new Warrant Certificate in respect of the shares of Common Stock as to which the Warrants evidenced by this Warrant Certificate shall not have been exercised. This Warrant Certificate may be exchanged at the office of the Warrant Agent by surrender of this Warrant Certificate properly endorsed either separately or in combination with one or more other Warrant Certificates for one or more new Warrant Certificates evidencing the right of the Holder to purchase the same aggregate number of shares of Common Stock as were purchasable on exercise of the Warrants evidenced by the Warrant Certificate or Certificates exchanged. No fractional shares will be issued upon the exercise of any Warrant, but the Company will pay the cash value thereof determined as provided in the Warrant Agreement.

The Holder may be treated by the Company, the Warrant Agent and all other persons dealing with this Warrant Certificate as the absolute owner hereof.

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The Warrants may be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, but only in accordance with the terms of the Warrant Agreement and in compliance with all applicable laws.

This Warrant Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Warrant Agent.

Dated: [_____], 201[_]

KINDER MORGAN, INC.

By:

[Seal]

Countersigned:

[_____],
as Warrant Agent

By:
Authorized Signature

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EXHIBIT B

NOTICE OF EXERCISE

(To be executed upon exercise of Warrant)

To: KINDER MORGAN, INC.

The undersigned hereby irrevocably elects to exercise the right of purchase represented by the Warrant Certificate within for, and to purchase thereunder, _____ shares of the Class P common stock, par value $0.01 per share, of Kinder Morgan, Inc. (the "Common Stock"), as provided for therein, and tenders herewith payment of the purchase price.

The purchase price shall be paid:

_____ in cash, certified check or official bank check; or

_____ by electing to receive a number of shares of Common Stock that is equal to the aggregate number of shares of Common Stock for which the Warrants are being exercised less the number of shares of Common Stock that have an aggregate Market Price (as defined in the Warrant Agreement) on the trading day on which such Warrants are exercised that is equal to the aggregate Exercise Price (as defined in the Warrant Agreement).

Please issue a certificate or certificates for such shares of Common Stock in the name of, and pay any cash for any fractional share to:

If in book-entry form:

DEPOSITORY ACCOUNT NUMBER:

NAME OF AGENT MEMBER:

If in definitive/certificated form:

SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER OF ASSIGNEE, IF ANY:

NAME:

ADDRESS:

SIGNATURE:

NOTE: The above signature should correspond exactly with the name on the face of this Warrant Certificate or with the name of the assignee appearing in the Permitted Transfer form below and must be guaranteed by a member of a recognized guarantee medallion program.

And, if said number of shares shall not be all the shares purchasable under the within Warrant Certificate, a new Warrant Certificate is to be issued in the name of said undersigned for the balance remaining of the shares purchasable thereunder less any fraction of a share paid in cash.

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PERMITTED TRANSFER

(To be executed only upon transfer of Warrant Certificate to the extent such transfer is

permissible under the terms of the Warrant Agreement)

For value received, _____ hereby sells, assigns and transfers unto the within Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ attorney, to transfer said Warrant Certificate on the books of Kinder Morgan, Inc., with full power of substitution in the premises.

Dated: _____, 201_

NOTE: The above signature should correspond exactly with the name on the face of this Warrant Certificate and must be guaranteed by a member of a recognized guarantee medallion program.

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Annex E

1585 Broadway

New York, NY 10036

October 16, 2011

Board of Directors

El Paso Corporation

El Paso Building

1001 Louisiana Street

Houston, Texas 77002

Members of the Board:

We understand that El Paso Corporation (the Company), Sirius Holdings Merger Corporation, a wholly owned subsidiary of the Company (New EP), Sirius Merger Corporation, a wholly owned subsidiary of New EP (Merger Sub 1), Kinder Morgan, Inc. (the Buyer), Sherpa Merger Sub, Inc., a wholly owned subsidiary of the Buyer (Merger Sub 2) and Sherpa Acquisition, LLC, a wholly owned subsidiary of the Buyer (Merger Sub 3), propose to enter into an Agreement and Plan of Merger, substantially in the form of the draft dated October 16, 2011 (the Merger Agreement), which provides, among other things, for the following transactions (collectively referred to herein as the Transactions): (1) the merger (the First Merger) of Merger Sub 1 with and into the Company (the resulting corporation being the Surviving Corporation), (2) immediately following the First Merger, the conversion (the LLC Conversion) of the Surviving Corporation into a limited liability company, (3) at least twenty days after the Company s shareholders approve the Transactions,, the merger (the Second Merger) of Merger Sub 2 with and into New EP (the resulting corporation being the New Surviving EP Corporation) and (4) immediately following the Second Merger, the merger (the Third Merger) of the New Surviving EP Corporation with and into Merger Sub 3. Pursuant to the Second Merger, the Company will become a wholly owned subsidiary of the Buyer, and each outstanding share of common stock, par value $3.00 per share of the Company (the Company Common Stock), other than shares held in treasury, held by the Buyer, Merger Sub 2 or Merger Sub 3 or as to which dissenters rights have been perfected, will be converted into the right to receive, at the election of the holder thereof, one of the following: (A) $14.65 per share in cash, 0.4187 of a share of Class P common stock, par value $0.01 per share, of the Buyer (the Buyer Common Stock) and 0.64 of a warrant of the Buyer to purchase one share of the Buyer Common Stock at an exercise price of $40.00 per share (a Buyer Warrant) (the Cash/Stock/Warrant Consideration), (B) $25.91 per share in cash and 0.64 of a Buyer Warrant (the Cash/Warrant Consideration) or (C) 0.9635 of a share of the Buyer Common Stock and 0.64 of a Buyer Warrant (the Stock/Warrant Consideration , and together with the Cash/Stock/Warrant Consideration and the Cash/Warrant Consideration payable pursuant to the Second Merger, the Consideration), each subject to adjustment in certain circumstances. The terms and conditions of the Transactions are more fully set forth in the Merger Agreement.

You have asked for our opinion as to whether the Consideration to be received by the holders of shares of the Company Common Stock pursuant to the Merger Agreement is fair from a financial point of view to the holders of shares of the Company Common Stock.

For purposes of the opinion set forth herein, we have:

1) Reviewed certain publicly available financial statements and other business and financial information of the Company and the Buyer, respectively;

2) Reviewed certain internal financial statements and other financial and operating data concerning the Company and the Buyer, respectively;

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3) Reviewed certain financial projections prepared by the managements of the Company and the Buyer, respectively;

4) Attended a presentation made by the financial advisor engaged by the Company in connection with the proposed spin-off of the Company s exploration and production business;

5) Discussed the past and current operations and financial condition and the prospects of the Company, with senior executives of the Company;

6) Discussed the past and current operations and financial condition and the prospects of the Buyer with senior executives of the Buyer;

7) Reviewed the pro forma impact of the Transactions on the Buyer s cash flow, cash flow per share and various credit statistics;

8) Reviewed the reported prices and trading activity for the Company Common Stock and the Buyer Common Stock;

9) Compared the financial performance of the Company and the Buyer and the prices and trading activity of the Company Common Stock and the Buyer Common Stock with that of certain other publicly-traded companies comparable with the Company and the Buyer, respectively, and their securities;

10) Compared the implied volatility of call options of the Buyer, call options of the Company and call options of certain other publicly-traded companies comparable with the Buyer;

11) Reviewed the historical stock price volatility of the Company and of certain other publicly-traded companies comparable with the Buyer;

12) Reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;

13) Participated in certain discussions among management representatives of the Company and the Buyer and each of their respective financial and legal advisors;

14) Reviewed the Merger Agreement and certain related documents; and

15) Performed such other analyses, reviewed such other information and considered such other factors as we have deemed appropriate.

We have assumed and relied upon, without independent verification, the accuracy and completeness of the information that was publicly available or supplied or otherwise discussed with or made available to us by the Company and the Buyer, and formed a substantial basis for this opinion. With respect to the financial projections, or material derived or extrapolated therefrom, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the respective managements of the Company and the Buyer of the future financial performance of the Company and the Buyer. In addition, we have assumed that the Transactions will be

consummated in accordance with the terms set forth in the Merger Agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, that (1) the First Merger and the LLC Conversion, taken together, and (2) the Second Merger and the Third Merger, taken together, will each be treated as a tax-free reorganization, pursuant to the Internal Revenue Code of 1986, as amended. Morgan Stanley has assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and consents required for the proposed Transactions, no delays, limitations, conditions or restrictions will be imposed that would have a material adverse effect on the contemplated benefits expected to be derived in the proposed Transactions. We are not legal, tax, or regulatory advisors. We are financial advisors only and have relied upon, without independent verification, the assessment of the Company and its legal, tax or regulatory advisors with respect to legal, tax or regulatory matters. We express no opinion with respect to the fairness of the amount or nature of the compensation to any of the

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Company s officers, directors or employees, or any class of such persons, relative to the Consideration to be received by the holders of shares of the Company Common Stock in the Transactions. We have not made any independent valuation or appraisal of the assets or liabilities of the Company or the Buyer, nor have we been furnished with any such valuations or appraisals. Our opinion is necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. Events occurring after the date hereof may affect this opinion and the assumptions used in preparing it, and we do not assume any obligation to update, revise or reaffirm this opinion.

In arriving at our opinion, we were not authorized to solicit, nor did we solicit, interest from any party with respect to the acquisition, business combination or other extraordinary transaction, involving the Company or certain of its constituent businesses, nor did we negotiate with any party, other than the Buyer.

We have acted as financial advisor to the Board of Directors of the Company in connection with the Transactions and will receive a fee for our services, a substantial portion of which is contingent upon the closing of the Transactions. In the two years prior to the date hereof, we have provided financial advisory and financing services for the Company and have received fees in connection with such services. Morgan Stanley may also seek to provide such services to the Buyer and the Company in the future and expects to receive fees for the rendering of these services.

Please note that Morgan Stanley is a global financial services firm engaged in the securities, investment management and individual wealth management businesses. Our securities business is engaged in securities underwriting, trading and brokerage activities, foreign exchange, commodities and derivatives trading, prime brokerage, as well as providing investment banking, financing and financial advisory services. Morgan Stanley, its affiliates, directors and officers may at any time invest on a principal basis or manage funds that invest, hold long or short positions, finance positions, and may trade or otherwise structure and effect transactions, for their own account or the accounts of its customers, in debt or equity securities or loans of the Buyer, the Company, or any other company, or any currency or commodity, that may be involved in the Transactions, or any related derivative instrument.

This opinion has been approved by a committee of Morgan Stanley investment banking and other professionals in accordance with our customary practice. This opinion is for the information of the Board of Directors of the Company (in its capacity as such) and may not be used for any other purpose without our prior written consent, except that a copy of this opinion may be included in its entirety in any filing the Company is required to make with the Securities and Exchange Commission in connection with the Transactions if such inclusion is required by applicable law. In addition, this opinion does not in any manner address the prices at which the Buyer Common Stock and Buyer Warrants will trade following consummation of the Transactions or at any time and Morgan Stanley expresses no opinion or recommendation as to how the shareholders of the Buyer and the Company should vote at the shareholders meetings to be held in connection with the Transactions.

Based on and subject to the foregoing, we are of the opinion on the date hereof that the Consideration to be received by the holders of shares of the Company Common Stock pursuant to the Merger Agreement is fair from a financial point of view to the holders of shares of the Company Common Stock.

Very truly yours,

MORGAN STANLEY & CO. LLC

By: /s/ Jonathan Cox

Jonathan Cox

Managing Director

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Annex F

October 16, 2011

Board of Directors

Kinder Morgan, Inc.

500 Dallas Street, Suite 1000

Houston, TX 77002

Members of the Board of Directors:

You have asked us whether, in our opinion, the Consideration (as defined below) to be paid by Kinder Morgan, Inc., a Delaware corporation (KMI), pursuant to the Merger Agreement (as defined below) is fair, from a financial point of view, to KMI.

Pursuant to and subject to the terms and conditions of an Agreement and Plan of Merger, dated as of October 16, 2011 (the Merger Agreement), by and among KMI, El Paso Corporation, a Delaware corporation (EP), Sirius Holdings Merger Corporation, a Delaware corporation and a direct, wholly owned subsidiary of EP (New EP), Sirius Merger Corporation, a Delaware corporation and a direct, wholly owned subsidiary of New EP (Merger Sub One), Sherpa Merger Sub, Inc., a Delaware corporation and a direct, wholly owned subsidiary of KMI (Merger Sub Two), and Sherpa Acquisition, LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of KMI (Merger Sub Three): (i) Merger Sub One will be merged with and into EP, with EP surviving such merger as a direct, wholly owned subsidiary of New EP; (ii) immediately thereafter, EP will be converted into a Delaware limited liability company; (iii) thereafter, Merger Sub Two will be merged with and into New EP, with New EP surviving such merger as a direct, wholly owned subsidiary of KMI (the Second Merger); and (iv) immediately thereafter, New EP will be merged with and into Merger Sub Three, with Merger Sub Three surviving such merger as a direct, wholly owned subsidiary of KMI (clauses (i) through (iv), collectively, the Merger).

As a result of the Merger, among other things, each issued and outstanding share of common stock of EP, par value $3.00 per share (EP Common Stock), other than the Excluded Shares (as defined in the Merger Agreement) and the Dissenting Shares (as defined in the Merger Agreement), will be converted into the right to receive, at the election of the holder of such share of EP Common Stock: (x) $14.65 in cash, 0.4187 of a share of Class P common stock of KMI, par value $0.01 per share (KMI Common Stock), and 0.640 of a warrant of KMI, each of which entitles the holder thereof to purchase one share of KMI Common Stock at $40.00 per share within five years of the effective time of the Second Merger (each such warrant, a KMI Warrant); (y) $25.91 in cash and 0.640 of a KMI Warrant; or (z) 0.9635 of a share of KMI Common Stock and 0.640 of a KMI Warrant; in each case subject to certain election procedures and limitations and proration mechanisms set forth in the Merger Agreement, as to which we express no opinion (such aggregate cash, KMI Common Stock and KMI Warrant consideration, collectively, the Consideration).

In connection with rendering our opinion, we have, among other things:

(i) reviewed certain publicly available business and financial information that we deemed to be relevant, including as set forth in Annual Reports on Form 10-K for each of the fiscal years in the three-year period ended December 31, 2010, Quarterly Reports on Form 10-Q for the quarters ended June 30, 2011 and March 31, 2011 and Current Reports on Form 8-K since June 24, 2011, in each case filed with the U.S. Securities and Exchange Commission (the SEC) by (A) KMI and certain of its affiliates, including Kinder Morgan Energy Partners, L.P. (KMP), and (B) EP and certain of its affiliates, including El Paso Pipeline Partners, L.P. (EPB), as well as publicly available research analysts estimates;

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Members of the Board of Directors

of Kinder Morgan, Inc.

October 16, 2011

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(ii) reviewed certain oil and gas reserve reports of EP for the years ended December 31, 2008, 2009 and 2010 prepared by EP (the Reserve Reports) and audited by Ryder Scott Company, L.P.

(iii) reviewed certain non-public projected financial and operating data and assumptions relating to KMI and certain of its affiliates, including KMP, prepared and furnished to us by the management of KMI;

(iv) reviewed certain non-public projected financial and operating data and assumptions relating to EP and certain of its affiliates, including EPB, prepared by the management of EP and adjusted by the management of KMI;

(v) discussed past and current operations, current financial condition and financial projections of KMI and certain of its affiliates, including KMP, with management of KMI;

(vi) discussed past and current operations, current financial condition and financial projections of EP and certain of its affiliates, including EPB, with management of EP;

(vii) reviewed the amount and timing of the synergies expected to result from the Merger (the Synergies), the timing and use of certain tax attributes of EP, as well as transaction expenses and one-time cash costs arising from the transaction (the Integration Costs), each as estimated by management of KMI;

(viii) reviewed certain non-public pro forma projected financial data and assumptions regarding KMI and certain of its affiliates, including KMP, and EP and certain of its affiliates, including EPB, prepared and furnished to us by management of KMI and EP;

(ix) reviewed the reported prices and the historical trading activity of KMI Common Stock, the common units of KMP, the shares of Kinder Morgan Management, LLC (KMR), EP Common Stock, and the common units of EPB;

(x) compared the financial performance of KMI and its market trading multiples with those of certain other publicly-traded companies that we deemed relevant;

(xi) compared the financial performance of EP and its market trading multiples with those of certain other publicly-traded companies that we deemed relevant;

(xii) compared the financial performance of KMP and its market trading multiples with those of certain other publicly-traded master limited partnerships that we deemed relevant;

(xiii) compared the financial performance of EPB and its market trading multiples with those of certain other publicly-traded master limited partnerships that we deemed relevant;

(xiv) compared the proposed financial terms of the Merger with publicly available financial terms of certain transactions that we deemed relevant;

(xv) reviewed a draft of the Merger Agreement, dated as of October 16, 2011; and

(xvi) performed such other analyses and examinations and considered such other factors that we deemed appropriate.

For purposes of our analysis and opinion, we have assumed and relied upon, without undertaking any independent verification of, the accuracy and completeness of all of the information publicly available, and all of the information supplied or otherwise made available to, discussed with, or reviewed by us, and we assume no liability therefor. With respect to the projected financial and operating data relating to KMI, EP and certain of their respective affiliates prepared by the respective managements of KMI and EP, we have assumed with your consent that, based on the advice of KMI and EP, respectively, such data has been reasonably prepared on bases

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reflecting the best currently available estimates and good faith judgments of the respective managements of KMI and EP as to the future financial and operating performance of KMI, EP and such affiliates. For purposes of our analysis and opinion, at your request, we have relied on the projections prepared by the respective managements of KMI and EP with respect to projected financial and operating data of KMI, EP and certain of their respective affiliates. With respect to the Synergies and the Integration Costs estimated by the management of KMI to result from the Merger and the timing and use of the tax attributes of EP, we have assumed that the timing, use and amounts of such Synergies, Integration Costs and tax attributes are reasonable and that that the Merger will qualify for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended. We express no view as to such financial and operating data, or as to the assumptions on which they were based. We understand the management of KMI has considered possible asset divestitures and concessions that may have to be made in connection with obtaining governmental, regulatory and other consents, approvals and releases necessary for the consummation of the Merger (the Possible Divestitures), and that such Possible Divestitures are reflected in the projected financial and operating data relating to KMI and certain of its affiliates, including KMP, prepared and furnished to us by the management of KMI. We express no view as to the sufficiency of, or the assumptions underlying such projected financial and operating data regarding, the Possible Divestitures.

For purposes of rendering our opinion, we have assumed, in all respects material to our analysis, that the executed Merger Agreement will be substantially the same as the draft dated October 16, 2011 and reviewed by us, that the representations and warranties of each party contained therein are and will be true and correct, that each party will perform all of the covenants and agreements required to be performed by it thereunder and that all conditions to the consummation of the Merger will be satisfied without material waiver or modification thereof. We have further assumed that there has been no material change in the business, assets, liabilities, financial condition, results of operations, cash flows or prospects of KMI, EP or any of their respective affiliates since the date of the most recent financial statements provided to us. Finally, we have assumed that all governmental, regulatory and other consents, approvals and releases necessary for the consummation of the Merger will be obtained without any material delay, limitation, restriction or condition that would have an adverse effect on KMI, EP or the consummation of the Merger or materially reduce the benefits to KMI of the Merger (other than with respect to the Possible Divestitures).

We have not made nor assumed any responsibility for making any physical inspection, independent valuation or appraisal of the assets or liabilities of KMI, EP, or any of their respective affiliates and, except for the Reserve Reports, we have not been furnished with any such valuation or appraisal. We have not evaluated the solvency or fair value of KMI, EP, or any of their respective affiliates under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, at your direction, we have assumed for purposes of this opinion that the outcome of any current and pending litigation affecting EP will not be material to our analysis. Our opinion is necessarily based upon information made available to us as of the date hereof and financial, economic, market and other conditions as they exist and as can be evaluated on the date hereof. You understand that subsequent developments may affect this opinion and that we do not have any obligation to update, revise or reaffirm this opinion.

We have not been asked to opine upon, and express no opinion with respect to, any matter other than the fairness, from a financial point of view, to KMI of the Consideration to be paid by KMI. We do not express any view on, and our opinion does not address, any other term or aspect of the Merger Agreement or the Merger or any term or aspect of any other agreement or instrument contemplated by the Merger Agreement or entered into or amended in connection with the Merger, including, without limitation, (i) the fairness of the Merger to, or of the Consideration or any other consideration to be received in connection therewith by, the creditors or other

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constituencies of KMI or EP or the stockholders of EP, or (ii) the fairness of the amount or nature of any compensation to be paid or payable to any of the directors, officers or employees of KMI, or any class of such persons, whether relative to the Consideration or otherwise. Our opinion does not address the relative merits of the Merger as compared to other business or financial strategies that might be available to KMI, nor does it address the underlying business decision of KMI to engage in the Merger. This letter, and our opinion, do not constitute a recommendation as to how any holder of KMI Common Stock should act or, if applicable, vote in respect of the issuance of KMI Common Stock in the Merger. We express no opinion as to the price at which KMI Common Stock and, when listed for trading, the KMI Warrants, the common units of KMP, the shares of KMR, EP Common Stock or the common units of EPB will trade at any time. We are not legal, regulatory, accounting or tax experts and have assumed with your consent the accuracy and completeness of assessments by KMI, EP and their respective advisors with respect to legal, regulatory, accounting and tax matters.

We will receive a fee for our services upon rendering this opinion in connection with the proposed transaction. We will also be entitled to receive a success fee if the Merger is consummated. KMI has also agreed to reimburse our expenses and to indemnify us against certain liabilities arising out of our engagement. During the two year period prior to the date hereof, no material relationship existed between Evercore Group L.L.C. (Evercore) and its affiliates, on the one hand, and KMI, EP or any of their respective affiliates, on the other hand, pursuant to which compensation was received or is intended to be received by Evercore or its affiliates as a result of such a relationship, and no such relationship was or is mutually understood to have been or be contemplated. We may provide financial or other services to KMI, EP, or any of their respective affiliates in the future and in connection with any such services we may receive compensation.

In the ordinary course of business, Evercore or its affiliates may actively trade the equity, debt or other securities, or related derivative securities, or other financial instruments, including bank loans and other obligations, of KMI, KMP, KMR, EP, EPB or any of their respective affiliates, for its own account and for the accounts of its customers and, accordingly, may at any time hold a long or short position in such securities or instruments.

This letter, and the opinion expressed herein is addressed to, and for the information, assistance and benefit of, the Board of Directors of KMI (the Board) in connection with its evaluation of the proposed Merger. The issuance of this opinion has been approved by an Opinion Committee of Evercore.

The Board may disclose this letter, and the opinion expressed herein, to the management of KMI and its affiliates. Additionally, KMI may publicly disclose that the Board engaged Evercore as its financial advisor in connection with the Merger and provided this opinion in connection with the Merger. Subject to the following sentence, this opinion is for the confidential use of the Board of Directors of KMI only in connection with its evaluation of the Merger and may not be provided to or relied upon by any other person without Evercore s prior consent (which shall not be unreasonably withheld, delayed or conditioned). KMI may not, and may not permit any third party to, use this opinion for any other purpose or disclose or otherwise refer to this opinion, or to Evercore, in any manner without Evercore s prior written consent (which shall not be unreasonably withheld, delayed or conditioned), except that KMI may reproduce this opinion in full in any document relating to the Merger that is required to be filed with the U.S. Securities and Exchange Commission, provided, however, that all references to Evercore or this opinion in any such document and the description or inclusion of this opinion therein shall be subject to Evercore s prior written consent (which shall not be unreasonably withheld, delayed or conditioned) with respect to form and substance.

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Members of the Board of Directors

of Kinder Morgan, Inc.

October 16, 2011

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Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Consideration to be paid by KMI pursuant to the Merger Agreement is fair, from a financial point of view, to KMI.

Very truly yours,

EVERCORE GROUP L.L.C.

By: /s/ Robert A. Pacha
Robert A. Pacha

Senior Managing Director

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Annex G

745 Seventh Avenue

New York, NY 10019

United States

October 16, 2011

Board of Directors

Kinder Morgan, Inc.

One Allen Center

500 Dallas, Suite 1000

Houston, Texas 77002

Members of the Board of Directors:

We understand that Kinder Morgan, Inc. (KMI or the Company) intends to enter into a transaction (the Proposed Transaction) with El Paso Corporation (El Paso) pursuant to which (i) Sirius Merger Corporation, an indirect wholly owned subsidiary of El Paso (Merger Sub One), will merge with and into El Paso (the First Step Merger) with El Paso surviving the First Step Merger (the EP Surviving Company), (ii) immediately following the effectiveness of the First Step Merger, the EP Surviving Company will be converted into a Delaware limited liability company (the LLC Conversion); (iii) following the effectiveness of the LLC Conversion, Sherpa Merger Sub, Inc., a direct, wholly owned subsidiary of KMI (Merger Sub Two) will merge (the Second Step Merger) with and into Sirius Holdings Merger Corporation, a direct, wholly owned subsidiary of El Paso prior to giving effectiveness of the First Merger, and the parent company of Merger Sub One (New EP), with New EP surviving the Second Step Merger (the New EP Surviving Corporation); (iv) immediately following the effectiveness of the Second Step Merger, the New EP Surviving Corporation will merge (the Third Step Merger) with and into Sherpa Acquisition, LLC, a direct wholly owned subsidiary of KMI (Merger Sub Three), with Merger Sub Three surviving the Third Step Merger and (v) upon the effectiveness of the Second Step Merger, each share of common stock of El Paso (El Paso Common Stock) then issued and outstanding (other than the Excluded Shares and the Dissenting Shares, as provided in the Agreement (as defined below)) will be converted into the right to receive, at the election of the holder, either: (I) a mixed election of (a) $14.65 per share in cash, (b) 0.4187 shares of the Class P Common Stock of KMI (KMI Class P Common Stock) and (c) 0.64 warrants to acquire KMI Class P Common Stock at $40 per share (the Per Share Warrant Consideration), in each case, subject to adjustment as set forth in the Agreement; (II) a cash election of (a) $25.91 per share in cash and (b) the Per Share Warrant Consideration, subject to adjustment as set forth in the Agreement; or (III) a stock election of (a) 0.9635 shares of KMI Class P Common Stock and (b) the Per Share Warrant Consideration, subject to adjustment as set forth in the Agreement ((I) through (III) collectively, the Merger Consideration). The terms and conditions of the Proposed Transaction are set forth in more detail in the Agreement and Plan of Merger dated as of October 16, 2011 by and among the Company, Merger Sub One, Merger Sub Two, Merger Sub Three, New EP and El Paso (the Agreement) and the summary of the Proposed Transaction set forth above is qualified in its entirety by the terms of the Agreement.

We have been requested by the Board of Directors of the Company to render our opinion with respect to the fairness, from a financial point of view, to the Company of the Merger Consideration to be paid by the Company in the Proposed Transaction. We have not been requested to opine as to, and our opinion does not in any manner address, the Company s underlying business decision to proceed with or effect the Proposed Transaction or the likelihood of consummation of the Proposed Transaction. In addition, we express no opinion on, and our opinion does not in any manner address, the fairness of the amount or the nature of any compensation to any officers, directors or employees of any parties to the Proposed Transaction, or any class of such persons, relative to the Merger Consideration paid in the Proposed Transaction or otherwise.

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In arriving at our opinion, we reviewed and analyzed: (1) the Agreement and the specific terms of the Proposed Transaction; (2) publicly available information concerning KMI, Kinder Morgan Energy Partners, L.P. (KMP), Kinder Morgan Management, LLC (KMR), El Paso and El Paso Pipeline Partners, L.P. (EPP) that we believe to be relevant to our analysis, including, without limitation, each of KMI s, KMP s, KMR s, El Paso s and EPP s Annual Reports on Form 10-K for the fiscal year ended December 31, 2010 and Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2011 and June 30, 2011; (3) financial and operating information with respect to the businesses, operations and prospects of KMI, KMP and KMR furnished to us by the Company, including financial projections of the Company prepared by management of the Company (the Company s Projections); (4) financial and operating information with respect to the businesses, operations and prospects of El Paso and EPP furnished to us by the management of El Paso and the Company, including (i) financial projections of El Paso and EPP prepared by management of El Paso (the El Paso Projections) and (ii) financial projections of El Paso and EPP prepared by management of the Company (the Company s El Paso Projections); (5) the trading history of El Paso Common Stock from October 15, 2009 to October 14, 2011 and a comparison of that trading history with other companies that we deemed relevant; (6) the trading history of the common stock of the Company (the KMI Common Stock) and El Paso Common Stock from February 10, 2011 to October 14, 2011 and a comparison of those trading histories with each other and with those of other companies that we deemed relevant; (7) a comparison of the historical financial results and present financial condition of KMI and El Paso with each other and with those of other companies that we deemed relevant; (8) a comparison of the financial terms of the Proposed Transaction with the financial terms of certain other transactions that we deemed relevant; (9) the potential pro forma impact of the Proposed Transaction on the current and future financial performance of the combined company, including (i) the amounts and timing of the cost savings and operating synergies expected by the management of the Company to result from the Proposed Transaction, (ii) the anticipated impact of certain asset dispositions and transfers discussed with the management of the Company and (iii) the estimated tax savings expected to result from the historical net operating losses of El Paso expected by the management of the Company to result from the Proposed Transaction ((i) through (iii) collectively, the Expected Benefits); (10) published estimates by independent equity research analysts with respect to the future financial performance of KMI and El Paso; (11) the relative trading liquidity of KMI Common Stock and the common stock of the pro forma combined company and (12) estimates of certain (i) proved reserves, as of December 31, 2010, for El Paso prepared by the management of El Paso and audited by a third-party reserve engineer and rolled forward by the management of El Paso to July 1, 2011 and (ii) probable and possible reserves and contingent resources, as of July 1, 2011, prepared by the management of El Paso ((i) and (ii) collectively, the El Paso Reserve Reports). In addition, we have (i) had discussions with the managements of KMI and El Paso concerning their respective businesses, operations, assets, liabilities, financial conditions and prospects and (ii) have undertaken such other studies, analyses and investigations as we deemed appropriate.

In arriving at our opinion, we have assumed and relied upon the accuracy and completeness of the financial and other information used by us without any independent verification of such information (and have not assumed responsibility or liability for any independent verification of such information) and have further relied upon the assurances of the managements of KMI and El Paso they are not aware of any facts or circumstances that would make such information inaccurate or misleading. With respect to the Company Projections, upon the advice of the Company, we have assumed that such projections have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of the Company as to the future financial performance of KMI and we have relied on such projections in arriving at our opinion. With respect to the El Paso Projections, upon the advice of El Paso and the Company, we have assumed that such projections have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of El Paso as to the future financial performance of El Paso. With respect to the

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Company s El Paso Projections, upon the advice of the Company, we have assumed that such projections have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of the Company as to the future financial performance of El Paso and we have relied on such projections in arriving at our opinion. With respect to the Expected Benefits, we have assumed that the amount and timing of the Expected Benefits are reasonable as estimated by the management of KMI and we have also assumed, upon the advice of KMI, that the Expected Benefits will be realized substantially in accordance with such estimates. With respect to the El Paso Reserve Reports, we have discussed these reports with the managements of the Company and El Paso and upon the advice of KMI and El Paso, we have assumed that the El Paso Reserve Reports are a reasonable basis upon which to evaluate the proved, probable and possible reserve and contingent resource levels of El Paso. In addition, at the direction of the Company, we have considered the possible asset divestitures and concessions that the Company may have to make in connection with the process to obtain governmental and regulatory approval for the Proposed Transaction (the Possible Divestitures) which have been discussed with us by the management of the Company. We assume no responsibility for and we express no view as to any projections or estimates described above in this paragraph or the assumptions on which they are based. In arriving at our opinion, we have not conducted a physical inspection of the properties and facilities of KMI or El Paso and have not made or obtained any evaluations or appraisals of the assets or liabilities of KMI or El Paso. Our opinion necessarily is based upon market, economic and other conditions as they exist on, and can be evaluated as of, the date of this letter. We assume no responsibility for updating or revising our opinion based on events or circumstances that may occur after the date of this letter. In addition, we express no opinion as to the prices at which shares of (i) KMI Common Stock or El Paso Common Stock will trade at any time following the announcement of the Proposed Transaction or (ii) KMI Common Stock will trade at any time following the consummation of the Proposed Transaction.

We have assumed the accuracy of the representations and warranties contained in the Agreement and all agreements related thereto. In addition, we have assumed that the Proposed Transaction will be consummated in accordance with the terms of the Agreement without waiver, modification or amendment of any material term, condition or agreement thereof. Other than as contemplated by the Possible Divestitures, we have also assumed, upon the advice of the Company, that necessary governmental, regulatory and third party approvals, consents and releases for the Proposed Transaction will be obtained without any adverse effect that is material to the Company, the combined company or the benefits expected by the management of the Company to be realized from the Proposed Transaction. We do not express any opinion as to any tax or other consequences that might result from the Proposed Transaction, nor does our opinion address any legal, tax, regulatory or accounting matters, as to which we understand that the Company has obtained such advice as it deemed necessary from qualified professionals.

Based upon and subject to the foregoing, we are of the opinion as of the date hereof that, from a financial point of view, the Merger Consideration to be paid by the Company in the Proposed Transaction is fair to the Company.

We have acted as financial advisor to the Company in connection with the Proposed Transaction and will receive fees for our services a portion of which is earned upon rendering this opinion and a substantial portion of which is contingent upon the consummation of the Proposed Transaction. In addition, the Company has agreed to reimburse our expenses and indemnify us for certain liabilities that may arise out of our engagement. We have performed various investment banking and financial services for KMI and its affiliates and El Paso and its affiliates in the past, and expect to perform such services in the future, and have received, and expect to receive, customary fees for such services. Specifically, in the past two years, we have performed the following investment banking and financial services for KMI and KMP and their affiliates, for which we received customary

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compensation: (i) in August 2011, we acted as joint bookrunner on KMI s $750 million notes offering; (ii) in June 2011, we acted as joint bookrunner on KMP s 6.7 million units offering; (iii) in February 2011, we acted as joint bookrunner on KMI s 109.8 million share initial public offering; (iv) in November 2010, we acted as joint bookrunner on KMI s $750 million notes offering; (v) in May 2010, we acted as joint bookrunner on KMP s 6.5 million units offering, (vi) in May 2010, we acted as co-manager on KMP s $1.0 billion notes offering and (vii) in December 2009, we acted as joint bookrunner on KMP s 4.5 million units offering. In addition, we have performed the following investment banking and financial services for El Paso and EPP and their affiliates, for which we received customary compensation; (i) in May 2011, we acted as joint bookrunner on EPP s 14.0 million units offering; (ii) in March 2011, we acted as joint bookrunner on EPP s 13.8 million units offering; (iii) in November 2010, we acted as joint bookrunner on EPP s 11.9 million units offering; (iv) in September 2010, we acted as co-manager on EPP s 11.5 million units offering; (v) in June 2010, we acted as joint bookrunner on EPP s 11.5 million units offering and (vi) in January 2010, we acted as joint bookrunner on EPP s 9.9 million units offering. In addition, the Company has requested and we are participating in the financing required in connection with the consummation of the Proposed Transaction and we will receive customary fees in connection therewith.

Barclays Capital Inc. and its affiliates engage in a wide range of businesses from investment and commercial banking, lending, asset management and other financial and non-financial services. In the ordinary course of our business, we and our affiliates may actively trade and effect transactions in the equity, debt and/or other securities (and any derivatives thereof) and financial instruments (including loans and other obligations) of KMI and its affiliates and El Paso and its affiliates for our own account and for the accounts of our customers and, accordingly, may at any time hold long or short positions and investments in such securities and financial instruments.

This opinion, the issuance of which has been approved by our Fairness Opinion Committee, is for the use and benefit of the Board of Directors of the Company and is rendered to the Board of Directors in connection with its consideration of the Proposed Transaction. This opinion is not intended to be and does not constitute a recommendation to any stockholder of the Company as to how such stockholder should vote with respect to the Proposed Transaction.

Very truly yours,

/s/ Barclays Capital Inc.
BARCLAYS CAPITAL INC.

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Annex H

SECTION 262 OF THE DELAWARE GENERAL CORPORATION LAW

§ 262. Appraisal rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder s shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word stockholder means a holder of record of stock in a corporation; the words stock and share mean and include what is ordinarily meant by those words; and the words depository receipt mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all

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or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Each stockholder electing to demand the appraisal of such stockholder s shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder s shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228, § 253, or § 267 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder s shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder s shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

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(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder s written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person s own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder s certificates of stock to the Register in Chancery, if such is

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required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court s decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney s fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder s demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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