

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 8-K
CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): October 2, 2024

New Fortress Energy Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of Incorporation)

001-38790
(Commission File Number)

83-1482060
(IRS Employer Identification No.)

**111 W. 19th Street, 8th Floor
New York, NY**
(Address of Principal Executive Offices)

10011
(Zip Code)

Registrant's Telephone Number, Including Area Code: **(516) 268-7400**

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock, par value \$0.01 per share	"NFE"	NASDAQ Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act

Item 1.01. Entry into a Material Definitive Agreement.*Underwriting Agreement*

On October 1, 2024, New Fortress Energy Inc. (the “Company”) entered into an underwriting agreement (the “Underwriting Agreement”) with Morgan Stanley & Co. LLC as representative of the several underwriters listed in Schedule A thereto (the “Underwriters”), providing for the issuance and sale by the Company of 46,349,942 shares of the Company’s Class A common stock, par value \$0.01 per share (the “Common Stock”), at a purchase price to the public of \$8.63 per share, less underwriting discounts and commissions, in a registered public offering (the “Offering”). Wesley R. Edens, chairman of the Company’s board of directors, the Chief Executive Officer and shareholder of the Company, has agreed to purchase 5,793,742 shares in the Offering at the public offering price per share and on the same terms as the other purchasers in the Offering. The Offering closed on October 2, 2024. The net proceeds to the Company, after deducting Underwriters’ discounts and commissions and the estimated offering expenses payable by the Company, were approximately \$387.25 million.

The Common Stock was offered and sold pursuant to a final prospectus supplement, dated October 1, 2024 and a base prospectus relating to the Company’s effective shelf registration statement on Form S-3 (File Number 333-277611), dated March 1, 2024.

The Underwriting Agreement includes representations, warranties and covenants by the Company customary for agreements of this nature. It also provides for customary indemnification by each of the Company and the Underwriters against certain liabilities arising out of or in connection with the sale of the Common Stock and customary contribution provisions in respect of those liabilities.

The foregoing description of the material terms of the Underwriting Agreement is qualified in its entirety by reference to the full text of the Underwriting Agreement, a copy of which is filed as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 1.01. A copy of the opinion of Skadden, Arps, Slate, Meagher and Flom LLP with respect to the validity of the Common Stock is attached hereto as Exhibit 5.1.

Registration Rights Agreement

In connection with the Exchange (as defined below), the Company entered into a Registration Rights Agreement, dated as of October 1, 2024 (the “Registration Rights Agreement”), with Ceiba Energy US LP (“Ceiba Energy”) requiring the Company to register the resale of the shares of Common Stock, underlying the Company’s 4.8% Series B Convertible Preferred Stock, par value \$0.01 per share and liquidation preference of \$1,000.00 per share (the “Series B Convertible Preferred Stock”), issued to Ceiba Energy in the Exchange. The Company is required to prepare and file a registration statement or an amendment or supplement to an existing registration statement on Form S-3 with the Securities and Exchange Commission (the “SEC”) as soon as reasonably practicable, but no later than the third business day following the closing of the Exchange. The Company granted Ceiba Energy customary indemnification rights in connection with the Registration Rights Agreement.

The foregoing description of the Registration Rights Agreement is qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is filed as Exhibit 4.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 1.01.

Item 3.02. Unregistered Sales of Equity Securities.

On October 1, 2024, the Company completed its previously disclosed transactions pursuant to the Exchange Agreement, dated as of September 23, 2024, by and between the Company and Ceiba Energy, pursuant to which the Company issued to Ceiba Energy 96,746 shares of its Series B Convertible Preferred Stock in exchange for Ceiba Energy’s 96,746 shares of the Company’s 4.8% Series A Convertible Preferred Stock, par value \$0.01 per share and liquidation preference of \$1,000.00 per share (the “Exchange”).

The Company issued the Series B Convertible Preferred Stock in reliance upon the exemption from registration requirements under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to Section 3(a)(9) thereof. The Company relied upon representations, warranties, certifications and agreements of Ceiba Energy in support of the satisfaction of the conditions contained in Section 3(a)(9) of the Securities Act.

The information about the Series B Convertible Preferred Stock set forth under Item 3.03 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 3.02.

Item 3.03. Material Modifications to Rights of Security Holders.

On October 1, 2024, the Company filed a Certificate of Designations (the "Certificate of Designations") with the Secretary of State of the State of Delaware to designate 96,746 shares of the Series B Convertible Preferred Stock, representing approximately \$96.7 million aggregate liquidation preference, with the powers, designations, preferences and other rights as set forth therein. The Certificate of Designations became effective upon filing on October 1, 2024.

The Certificate of Designations provides that the Company will pay, when, as and if declared by the Company's board of directors, out of funds legally available for the payment of dividends, quarterly cumulative cash dividends at an annual rate of 4.8% (the "Dividend Rate") of the liquidation preference of \$1,000 per share of Series B Convertible Preferred Stock, in arrears, on March 31, June 30, September 30 and December 31 of each year, beginning on December 31, 2024. In the event the Company fails to pay the full cumulative dividends payable on a dividend payment date, the rate at which dividends accumulate will immediately increase to the Dividend Rate plus 5.0%, until such date as the Company has paid all previously accrued but unpaid dividends.

The Series B Convertible Preferred Stock ranks senior to the Common Stock, with respect to the payment of dividends and rights upon the voluntary or involuntary liquidation, dissolution or winding up of the Company. Subject to certain exceptions, so long as any share of Series B Convertible Preferred Stock remains outstanding, no dividend or distribution will be declared or paid on shares of the Common Stock or any other class or series of stock ranking junior to the Series B Convertible Preferred Stock, and no Common Stock or any other class or series of stock ranking junior to the Series B Convertible Preferred Stock will be purchased, redeemed or otherwise acquired for consideration by the Company unless, in each case, all accumulated and unpaid dividends for all preceding dividend periods have been declared and paid, or a sufficient amount of cash has been set apart for the payment of such dividends, on all outstanding shares of Series B Convertible Preferred Stock.

The Series B Convertible Preferred Stock may be redeemed by the Company, in whole but not in part, at its option upon 45 days' written notice at any time (A) on or before March 20, 2027 at a redemption price equal to the greater of (i) \$1,000.00 per share plus any accumulated and unpaid dividends thereon and (ii) the cash amount necessary per share for a holder to achieve a Return on Investment (as defined in the Certificate of Designations) as of the redemption date equal to 1.4; and (B) (x) after the 30th trading day following March 20, 2027 if the Share Price Condition (as defined in the Certificate of Designations) is not met or (y) 30 calendar days after the delivery of the required notice if the Share Price Condition is met, in each case, at a redemption price equal to \$1,000.00 per share plus any accumulated and unpaid dividends thereon. At its option, the Company may also redeem the Series B Convertible Preferred Stock, in whole but not in part, upon the occurrence of a Change Event (as defined in the Certificate of Designation). The Company may redeem the Series B Convertible Preferred Stock for cash or shares of Common Stock (or any combination thereof); provided that each holder of the Series B Convertible Preferred Stock may (i) for any redemption, require the Company to redeem for shares of Common Stock and (ii) for a redemption upon a Change Event prior to March 20, 2027, require the Company to redeem for cash.

Upon the occurrence of a Change Event or a Share Event (as defined in the Certificate of Designations), each holder of the outstanding voting power of the Series B Convertible Preferred Stock may require the Company to repurchase the Series B Convertible Preferred Stock, in whole but not in part, for cash or shares of Common Stock (or any combination thereof) at a repurchase price of \$1,000.00 per share plus any accumulated and unpaid dividends thereon; provided that each holder of the Series B Convertible Preferred Stock may require the Company to repurchase for shares of Common Stock.

The Series B Convertible Preferred Stock may be converted by each holder, in whole or in minimum increments of 5,000 shares, at any time into a number of shares of Common Stock per share of Series B Convertible Preferred Stock equal to the quotient of \$1,000.00 per share plus any accumulated and unpaid dividends thereon and the then applicable conversion price. The initial conversion price is \$9.9645 per share of Common Stock, subject to (i) a downward adjustment to be 105% of the price per share of the Common Stock that the Company agrees to issue and sell in a primary offering at any time prior to December 31, 2024 if such per share amount in the primary offering is less than \$9.49 per share of Common Stock and (ii) customary anti-dilution adjustments.

The Series B Convertible Preferred Stock has no stated maturity, is not subject to any sinking fund and will remain outstanding indefinitely unless redeemed or repurchased by the Company or converted into Common Stock.

Holders of the Series B Convertible Preferred Stock generally will be entitled to vote with the holders of the shares of Common Stock on all matters submitted for a vote of holders of shares of Common Stock (voting together with the holders of shares of Common Stock as a single class) on an as-converted basis, subject to limitation as needed to comply with Nasdaq listing standards for the Common Stock. Additionally, (i) any amendment, modification or repeal of any provision of the Company's Certificate of Incorporation, Bylaws or the Certificate of Designations that adversely

affects the rights, preferences or voting powers of the Series B Convertible Preferred Stock and (ii) any exchange, reclassification or cancellation of all or part of the Series B Convertible Preferred Stock require the approval of the holders constituting at least a majority of the outstanding voting power of the Series B Convertible Preferred Stock, voting as a separate class.

The foregoing description of the terms of the Series B Convertible Preferred Stock is qualified in its entirety by reference to the Certificate of Designations, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 3.03.

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

The information about the Certificate of Designations set forth under Item 3.03 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 5.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
<u>1.1</u>	Underwriting Agreement, dated October 1, 2024, among the Company and Morgan Stanley & Co. LLC, as representative of the underwriters named therein.
<u>3.1</u>	Certificate of Designations of New Fortress Energy Inc., designating the Company's 4.8% Series B Convertible Preferred Stock, par value \$0.01 per share.
<u>4.1</u>	Registration Rights Agreement, dated as of October 1, 2024, by and between New Fortress Energy Inc. and Ceiba Energy US LP.
<u>5.1</u>	Opinion of Skadden, Arps, Slate, Meagher and Flom LLP.
23.1	Consent of Skadden, Arps, Slate, Meagher and Flom LLP (included in Exhibit 5.1).
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document.

SIGNATURES

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

NEW FORTRESS ENERGY INC.

Date: October 2, 2024

By: /s/ Christopher S. Guinta
Name: Christopher S. Guinta
Title: Chief Financial Officer

NEW FORTRESS ENERGY INC.

(a Delaware corporation)

Class A common stock

(par value \$0.01 per share)

UNDERWRITING AGREEMENT

October 1, 2024

Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

Ladies and Gentlemen:

New Fortress Energy Inc., a Delaware corporation (the “Company”), confirms its agreement with Morgan Stanley & Co. LLC as representative (the “Representative”) of the several underwriters listed on Schedule A hereto (the “Underwriters”) with respect to the sale by the Company and the purchase by the Underwriters of an aggregate of 46,349,942 shares (the “Shares”) of Class A common stock, par value \$0.01 per share (the “Common Stock”) of the Company.

The Company has filed with the Securities and Exchange Commission (the “Commission”) a registration statement, including a prospectus, on Form S-3 (No. 333-277611), relating to various securities of the Company (the “Shelf Securities”), including the Shares, to be issued from time to time by the Company. The registration statement as amended to the date of this Agreement, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A (“Rule 430A”) of the rules and regulations of the Commission under the Securities Act of 1933, as amended (the “Securities Act”, and such rules and regulations of the Commission thereunder, the “Securities Act Regulations”) or Rule 430 B under the Securities Act, is hereinafter referred to as the “Registration Statement”, and the related prospectus covering the Shelf Securities included therein (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “Basic Prospectus.” The Basic Prospectus, as supplemented by the prospectus supplement specifically relating to the Shares in the form first used to confirm sales of the Shares, if any, (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the “Prospectus,” and the term “preliminary prospectus” means any preliminary form of the Prospectus. For purposes of this Agreement, an “Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the Securities Act Regulations (“Rule 433”), including without limitation any “free writing prospectus” (as defined in Rule 405 of the Securities Act Regulations (“Rule 405”)) relating to the Shares that is (i) required to be filed with the Commission by the Company, or (ii) a “road show

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that is a written communication” within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g). “Applicable Time” means 9:00 A.M., New York City time, on October 1, 2024, or such other time as agreed by the Company and the Underwriters. “Time of Sale Prospectus” means any Issuer Free Writing Prospectuses that is intended for general distribution to prospective investors (other than a broadly available roadshow), as evidenced by its being specified in Schedule B-2 and that is issued at or prior to the Applicable Time, the most recent preliminary prospectus or Basic Prospectus, as applicable, that is distributed to investors prior to the Applicable Time and the information included on Schedule B-1 hereto, all considered together, and “broadly available road show” means a “bona fide electronic road show” as defined in Rule 433(h)(5) under the Securities Act that has been made available without restriction to any person. As used herein, the terms “Registration Statement,” “Basic Prospectus,” “preliminary prospectus,” “Time of Sale Prospectus” and “Prospectus” shall include the documents, if any, incorporated by reference therein as of the date hereof. The terms “supplement,” “amendment,” and “amend” as used herein with respect to the Registration Statement, the Basic Prospectus, the Time of Sale Prospectus, any preliminary prospectus or the Prospectus shall include all documents subsequently filed by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act” and such rules and regulations of the Commission thereunder, the “Exchange Act Regulations”), that are deemed to be incorporated by reference therein.

SECTION 1. Representations and Warranties.

(a) Representations and Warranties. The Company represents and warrants to the Underwriters as of the date hereof, the Applicable Time, and the Closing Time, and agrees with the Underwriters, as follows:

(i) Registration Statement and Prospectuses. Each of the Registration Statement and any post-effective amendment thereto, each of which became immediately effective upon filing thereof with the Commission, other than a registration statement, if any, increasing the size of the offering (a “Rule 462(b) Registration Statement”), filed pursuant to Rule 462(b) under the Securities Act, which became effective upon filing, and no other document with respect to the Registration Statement has heretofore been filed with the Commission, other than the Rule 462(b) Registration Statement, if any. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto, or the Rule 462(b) Registration Statement, if any, has been issued under the Securities Act, and no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the knowledge of the Company, threatened by the Commission. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the requirements of the Securities Act and the Securities Act Regulations. Each preliminary prospectus, the

Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the Securities Act and the Securities Act Regulations. Each preliminary prospectus delivered by the Company to the Underwriters for use in connection with this offering and the Prospectus was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(ii) Accurate Disclosure. (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Time of Sale Prospectus or the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii) each part of the Registration Statement, when such part became effective, did not contain, and each such part, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading, (iii) the Registration Statement as of the date hereof does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading, (iv) the Registration Statement and the Prospectus comply, and as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder, (v) the Time of Sale Prospectus does not, and at the time of each sale of the Shares in connection with the offering when the Prospectus is not yet available to prospective purchasers and at the Closing Time (as defined in Section 2), the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, (vi) each broadly available road show, if any, when considered together with the Time of Sale Prospectus, does not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and (vii) the Prospectus does not contain and, as amended or supplemented, if applicable, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The representations and warranties in this subsection shall not apply to statements in or omissions from the Registration Statement (or any amendment thereto), the Time of Sale Prospectus, any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by the Underwriters expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the fifth, sixth and seventh paragraphs under the heading “Underwriting” in each case contained in the Prospectus (collectively, the “Underwriter Information”).

(iii) Issuer Free Writing Prospectuses. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified.

(iv) Testing-the-Waters Communications. The Company (i) has not alone engaged in any Testing-the-Waters Communication and (ii) has not authorized anyone to engage in Testing-the-Waters Communications, other than, in each case, as undertaken in compliance with Rule 163B of the Securities Act and as previously disclosed to the Underwriters. The Company has not distributed any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act (“Written Testing-the-Waters Communications”), other than those previously provided to the Underwriters and listed on Schedule D hereto. “Testing-the-Waters Communication” means any oral or written communication with potential investors undertaken in reliance on Rule 163B of the Securities Act. Each Written Testing-the-Waters Communication, when taken together with the Time of Sale Prospectus at the Applicable Time, did not, and at the Closing Time will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(v) Well-Known Seasoned Issuer, Ineligible Issuer. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the Securities Act Regulations) of the Shares, and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer and the Company was and is a “well-known seasoned issuer” as defined in Rule 405.

(vi) Organization and Good Standing of the Company. The Company and each of its subsidiaries has been duly organized, is validly existing and in good standing as a corporation, limited liability company, limited partnership or other business entity under the laws of its jurisdiction of organization and is duly qualified to do business and in good standing as a foreign corporation, limited liability company, limited partnership or other business entity in each jurisdiction in which its ownership or lease of property or the conduct of its businesses requires such qualification, except where the failure to be so qualified or in good standing would not, in the aggregate, reasonably be expected to have a material adverse effect on the condition (financial or otherwise), results of operations, members’ or stockholders’ equity, properties or business of the Company and its subsidiaries taken as a whole (a “Material Adverse Effect”), or, material adverse effect on the performance by the Company of its obligations under this Agreement. The Company and its subsidiaries have all power and authority necessary to own or hold its properties and to conduct the businesses in which it is engaged.

(vii) Due Authorization. The Company has all requisite limited liability company, limited partnership, corporate or other power, as applicable, and authority to perform its obligations under this Agreement. All action required to be taken for the due and proper authorization, execution and delivery of this Agreement by the Company has, as of the Closing Time, been duly and validly taken.

(viii) Capitalization. The Company has an authorized capitalization as set forth in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus and

all of the authorized, issued and outstanding shares of capital stock have been duly authorized and validly issued and are fully paid and non-assessable. All of the issued and outstanding shares of capital stock or other equity interests of each subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and, except as described in each of the Registration Statement, Time of Sale Prospectus and Prospectus, are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims (collectively, "Liens"), except for Liens as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ix) Authorization and Description of Shares. The Shares to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set herein, will be validly issued and fully paid and non-assessable; and the issuance of the Shares is not subject to any preemptive or other similar rights of any securityholder of the Company. The Shares will conform in all material respects to the descriptions thereof in the Registration Statement, the Time of Sale Prospectus and the Prospectus.

(x) No Conflicts. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in each of the Registration Statement, Time of Sale Prospectus and the Prospectus (including the issuance and sale of the Shares and the use of the proceeds from the sale of the Shares as described therein under the caption "Use of Proceeds") will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, impose any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, license, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the charter or bylaws (or similar organizational documents) of the Company or any of its subsidiaries, or (iii) result in any violation of any statute or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets, except, with respect to clauses (i) and (iii), conflicts or violations that would not reasonably be expected to have a Material Adverse Effect.

(xi) No Consents Required. No consent, approval, authorization or order of, or filing, registration or qualification with, any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets is required for the execution, delivery and performance by the Company of this Agreement or the application of the proceeds from the sale of the Shares as described under "Use of Proceeds" in each of the Registration Statement, Time of Sale Prospectus and the Prospectus and the consummation by the Company of the transactions contemplated hereby and thereby, except (A) such as have been already obtained or as may be required under the Securities Act, the Securities Act Regulations, the rules of the Nasdaq Global Select Market, state securities or Blue Sky laws or the rules of the Financial Industry Regulatory

Authority (“FINRA”), and (B) such consents, approvals, authorizations or orders that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(xii) Accuracy of Exhibits. There are no contracts or documents which are required to be described in the Registration Statement, the Time of Sale Prospectus or the Prospectus or to be filed as exhibits to the Registration Statement which have not been so described and/ or filed as required.

(xiii) Related-Party Transactions. There are no business relationships or related-party transactions involving the Company or any of its subsidiaries or any related person as defined under Item 404 of Regulation S-K required to be described in the Registration Statement, the Time of Sale Prospectus or the Prospectus that have not been described as required.

(xiv) Financial Statements; Non-GAAP Financial Measures. The historical financial statements (including the related notes and supporting schedules) included or incorporated by reference in the Registration Statement, Time of Sale Prospectus and Prospectus present fairly in all material respects the financial condition, results of operations and cash flows of the entities purported to be shown thereby, at the dates and for the periods indicated, and have been prepared in conformity with accounting principles generally accepted in the United States (“GAAP”) applied on a consistent basis throughout the periods involved except for any annual year-end adjustment, the adoption of new accounting principles, and except as otherwise noted therein. The supporting schedules, if any, present fairly in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. Any disclosures contained in the Registration Statement, the Time of Sale Prospectus or the Prospectus, regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act and Item 10 of Regulation S-K of the Securities Act, to the extent applicable. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement, Time of Sale Prospectus and the Prospectus under the Securities Act.

(xv) Distributions. No subsidiary of the Company is prohibited or restricted, directly or indirectly, from paying distributions or dividends to the Company, or from making any other distribution with respect to such subsidiary’s equity securities or from repaying to the Company or any other subsidiary of the Company any amounts that may from time to time become due under any loans or advances to such subsidiary from the Company or from transferring any property or assets to the Company or to any other subsidiary of the Company, except (i) as described in or contemplated in each of the Registration Statement, Time of Sale Prospectus and Prospectus (including any amendment or supplement thereto), (ii) such prohibitions mandated by the laws of each such subsidiary’s jurisdiction of formation and the organizational documents of such subsidiaries, as applicable, (iii) for such prohibitions arising under the debt agreements of

such subsidiaries and (iv) where such prohibition would not, individually or in the aggregate, have a Material Adverse Effect.

(xvi) Independent Auditors. Ernst & Young LLP, which have audited certain financial statements of the Company and its subsidiaries, the reports of which are incorporated by reference into the Registration Statement, Time of Sale Prospectus and Prospectus, and which have delivered the initial letter referred to in Section 5(e) hereof, are independent auditors with respect to the Company and its subsidiaries within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) as required by the Securities Act.

(xvii) Accounting Controls. The Company and its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (C) access to assets is permitted only in accordance with management's general or specific authorization; (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (E) interactive data in eXtensible Business Reporting Language included or incorporated by reference in each of the Registration Statement, Time of Sale Prospectus and Prospectus is prepared in accordance with the Commission's rules and guidelines applicable thereto. Except as described in the Registration Statement, Time of Sale Prospectus and Prospectus, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(xviii) No Material Adverse Changes. Except as described in each of the Registration Statement, Time of Sale Prospectus and Prospectus, since the date of the latest audited financial statements included or incorporated by reference in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus, neither the Company nor any of its subsidiaries has (A) sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or court or governmental action, order or decree, (B) issued or granted any equity securities, (C) incurred any material liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (D) entered into any material transaction not in the ordinary course of business, (E) declared or paid any dividend on its limited liability company interests, capital stock or other equity interests, and (F) since such date, there has not been any change, or any development involving any prospective change, in the capital

stock, limited partnership or membership interests, as applicable, or short- or long-term debt of the Company or its subsidiaries or any adverse change in or affecting the condition (financial or otherwise), results of operations, members' or stockholders' equity, properties, management or business of the Company or its subsidiaries, taken as a whole, in each case except as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(xix) Real and Personal Property. The Company and its subsidiaries have (i) good and marketable title in fee simple to all real property and (ii) good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances, equities and claims, except such liens, encumbrances, equities and claims as are described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus or which would not reasonably be expected to have a Material Adverse Effect, and do not interfere with the use made and proposed to be made of any property by the Company or its subsidiaries; and any real property and buildings held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company or such subsidiary, in each case except as described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus.

(xx) Rights-of-way. The Company and its subsidiaries have such consents, easements, rights-of-way or licenses from any person ("rights-of-way") as are necessary to conduct their businesses in the manner described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus, subject to such qualifications as may be set forth in the Registration Statement, Time of Sale Prospectus and Prospectus and except for such rights-of-way the failure of which to have obtained would not have, individually or in the aggregate, a Material Adverse Effect; the Company and its subsidiaries have fulfilled and performed all their material obligations with respect to such rights-of-way and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or would result in any impairment of the rights of the holder of any such rights-of-way, except for such revocations, termination and impairments that will not have a Material Adverse Effect, subject in each case to such qualification as may be set forth in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus; and, except as described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus, none of such rights-of-way contains any restriction that is materially burdensome to the Company and its subsidiaries, taken as a whole.

(xxi) Licenses and Permits. The Company and each of its subsidiaries have such permits, licenses, patents, franchises, certificates of need and other approvals or authorizations of governmental or regulatory authorities ("Permits") as are necessary under applicable law to own their properties and conduct their businesses in the manner described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus, except for any of the foregoing that would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries have fulfilled and performed all of their obligations with respect to the Permits, and no event has occurred that allows, or after notice or lapse of time would allow,

revocation or termination thereof or results in any other impairment of the rights of the holder or any such Permits, except for any of the foregoing that would not reasonably be expected to have a Material Adverse Effect or except as described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus. Neither the Company nor any of its subsidiaries has received notice of any revocation or modification of any such Permits or has reason to believe that any such Permits will not be renewed in the ordinary course, except for any of the foregoing that would not reasonably be expected to have a Material Adverse Effect.

(xxii) Intellectual Property. The Company and its subsidiaries own or possess, or can acquire on reasonable terms, all patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names currently employed by them in connection with the business now operated by them, and neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any of the foregoing which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect.

(xxiii) Legal Proceedings. Except as described in each of the Registration Statement, Time of Sale Prospectus and Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that would, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect or would, singly or in the aggregate, reasonably be expected to have a material adverse effect on the performance by the Company of its obligations under this Agreement or the consummation of any of the transactions contemplated hereby. To the knowledge of the Company, no such proceedings are threatened by governmental authorities or others.

(xxiv) Insurance. The Company and its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; none of the Company or any of its subsidiaries have been refused any insurance coverage sought or applied for; and none of the Company or any of its subsidiaries have any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, except as described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus.

(xxv) Absence of Labor Dispute. No labor dispute with the employees of the Company or any of its subsidiaries exists, or, to the knowledge of the Company, is imminent that could have a Material Adverse Effect; and the Company is not aware of any existing, threatened or imminent labor disturbance by the employees of any of their principal suppliers, manufacturers or contractors that would have a Material Adverse Effect.

(xxvi) No Violation or Default. None of Company or any of its subsidiaries (A) is in violation of its charter, certificate of formation, bylaws, limited partnership agreement or limited liability company agreement (or similar organizational documents), (B) is in default, and no event has occurred that, with notice or lapse of time or both, would constitute a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, license or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject, or (C) is in violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or its property or assets or has failed to obtain any license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business, except in the case of clauses (B) and (C), to the extent any such conflict, breach, violation or default would not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(xxvii) Compliance With Environmental Laws.

Except as described in the Registration Statement, the Time of Sale Prospectus and the Prospectus:

(A) the Company and its subsidiaries (i) are in compliance with any and all applicable, legally binding foreign, federal, state and local laws, rules, regulations, requirements, decisions, judgments, decrees, orders and the common law relating to the protection of the environment, natural resources, wildlife or human health or safety, including, without limitation, those relating to the Release (as defined below) or threat of Release of Hazardous Materials (as defined below) or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, “Environmental Laws”), (ii) have applied for or received and are in compliance with all permits, licenses, certificates or other authorizations or approvals required of them under applicable Environmental Laws to conduct their respective businesses, (iii) have not received written notice of any actual or potential liability of the Company and its subsidiaries under or relating to, or actual or potential violation by the Company and its subsidiaries of, any Environmental Laws, including for the investigation or remediation of any Release or threat of Release of Hazardous Materials, and, to the knowledge of the Company, there is no environmental incident or condition that would reasonably be expected to result in any such notice, (iv) are not subject to any written or, to the knowledge of the Company, threatened adverse claim by any governmental agency or government body or other person relating to Environmental Laws or Hazardous Materials and (v) to the knowledge of the Company, does not have any liability in connection with the Release into the environment of any Hazardous Material, except where such failure to comply with Environmental Laws in clause (i) above, such failure to receive required permits or such failure to comply with the terms and conditions of such permits in clause (ii) above, such notices in clause (iii) above, such claims in clause (iv) above, or such liability in clause (v) above would not have a Material Adverse Effect on the Company and its subsidiaries, taken as a whole. “Hazardous Materials” means

any material, chemical, substance, waste, pollutant, contaminant, compound, mixture, or constituent thereof, in any form or amount, including petroleum (including crude oil or any fraction thereof) and petroleum products, natural gas liquids, asbestos and asbestos containing materials, naturally occurring radioactive materials, brine, and drilling mud, regulated or which can give rise to liability under any Environmental Law. "Release" means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, or migrating in, into or through the environment, or in, into, from or through any building or structure.

(B) there are no proceedings that are pending, or that are known by the Company to be contemplated, against the Company or any of its subsidiaries under any Environmental Laws and the Company is not aware of any facts or issues which form the basis of any violation of Environmental Laws, or liabilities or other obligations under Environmental Laws, including the Release or threat of Release of Hazardous Materials, that would, singly or in the aggregate, have a Material Adverse Effect on the Company and its subsidiaries, taken as a whole.

(C) to the knowledge of the Company, there are no costs or liabilities of the Company and its subsidiaries associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties under Environmental Laws) which would, singly or in the aggregate, have a Material Adverse Effect on the Company and its subsidiaries, taken as a whole.

(xxviii) Taxes. The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, individually or in the aggregate, have a Material Adverse Effect) and have paid all taxes required to be paid by them (except for cases in which the failure to file or pay would not have a Material Adverse Effect, or, except as currently being contested in good faith and for which reserves required by U.S. GAAP have been created in the financial statements of the Company), and no tax deficiency has been determined adversely to the Company or any of its subsidiaries which has had (nor does the Company or any of its subsidiaries have any notice or knowledge of any tax deficiency which would reasonably be expected to be determined adversely to the Company or its subsidiaries and which would reasonably be expected to have) a Material Adverse Effect.

(xxix) Employee Benefits. Except as would not reasonably be expected to result in a Material Adverse Effect on the Company and its subsidiaries, taken as a whole, (i) each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) for which the Company or any of its Subsidiaries would have, directly or indirectly (including as a result of being in a "controlled group" for purposes of Section 414 of the Internal Revenue Code of 1986, as amended (the "Code")), any liability (each a "Plan") has been maintained, and all required

contributions to each Plan have been made, in compliance with its terms and with the requirements of applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, or violation of fiduciary obligations, has occurred with respect to any Plan, excluding transactions effected pursuant to a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA (A) no “reportable event” (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Sections 412 and 430 of the Code), whether or not waived, has occurred or is reasonably expected to occur, (C) the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan), and (D) neither the Company nor any of its Subsidiaries has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a “multiemployer plan,” within the meaning of Section 4001(c)(3) of ERISA); and (iv) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, that would reasonably be expected to cause the loss of such qualification.

(xxx) Statistical and Market Data. The statistical and market-related data included in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus and the consolidated financial statements included in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus are based on or derived from sources that the Company believes to be reliable in all material respects and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(xxxi) Investment Company Act. The Company is not, and immediately after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described under “Use of Proceeds” in each of the Registration Statement, Time of Sale Prospectus and Prospectus, will not be, an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

(xxxii) Authorization of Description of Laws and Documents. The statements set forth in each of the Registration Statement, Time of Sale Prospectus and Prospectus under the captions “Material United States Federal Income Tax Considerations for Non-U.S. Holders,” insofar as they purport to summarize provisions of the laws and documents referred to therein, are accurate summaries in all material respects.

(xxxiii) Registration Rights. Except as described in each of the Registration Statement, Time of Sale Prospectus and the Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the

Company to include such securities in the securities registered pursuant to the Registration Statement.

(xxxiv) No Broker's Fees. Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them or the Underwriters for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Shares.

(xxxv) No Stabilization. The Company and its affiliates have not taken, directly or indirectly, any action designed to or that has constituted or that would reasonably be expected to cause or result in the stabilization or manipulation of the price of any security of the Company in connection with the offering of the Shares.

(xxxvi) No Unlawful Payments. (A) None of the Company or any of its subsidiaries nor, to the knowledge of the Company after reasonable inquiry, any director, officer, employee, agent, or representative of the Company or of any of its subsidiaries, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment, giving or receipt of money, property, gifts or anything else of value, directly or indirectly, to any government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) in order to influence official action, or to any person in violation of any applicable anti-corruption laws; (B) the Company and its subsidiaries have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained herein; and (C) none of the Company or any of its subsidiaries will use, directly or indirectly, the proceeds of the offering in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any applicable anti-corruption laws.

(xxxvii) Compliance with Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)) ("USA PATRIOT Act"), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder, and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Anti-Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xxxviii) Compliance with OFAC. (A) None of the Company or any of its subsidiaries, nor, to the knowledge of the Company after reasonable inquiry, any director, officer, employee or agent of the Company or any of its subsidiaries, is an individual or entity (“Person”) that is, or is owned or controlled by one or more Persons that are: (1) the subject of any sanctions administered or enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”), the United Nations Security Council (“UNSC”), the European Union (“EU”), His Majesty’s Treasury (“HMT”), or any other relevant sanctions authority (collectively, “Sanctions”), or (2) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic or any other Covered Region of Ukraine identified pursuant to Executive Order 14065, Crimea, Cuba, Iran, North Korea and Syria); (B) the Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person: (1) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; (2) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise); and (C) For the past ten years, the Company and its subsidiaries have not knowingly engaged in, and are not now knowingly engaged in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(b) Officer’s Certificates. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Underwriters or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each of the Underwriters as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) Shares. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to the Underwriters and the Underwriters agree to purchase from the Company, at \$8.333991 per Share, the number of Shares set forth in Error! Reference source not found. opposite the name of such Underwriter; provided that with respect to an aggregate of 5,793,742 Shares allocated at the direction of the Company (the “Directed Shares”) to persons and in the amounts listed on Schedule A-1 to this Agreement, the Underwriters shall purchase such Directed Shares at a price of \$8.63 per Share.

(b) Payment. Payment of the purchase price for, and delivery of certificates for, the Shares shall be made at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, or at such other place as shall be agreed upon by the Representative and the Company, at 10:00 A.M. (New York City time) on the first (second, if the pricing occurs after 4:30 P.M. (New York City time) on any given day) business day after the date hereof, or such other time not later than ten business days after such date as shall be agreed upon by the Representative and the Company (such time and date of payment and delivery being herein called “Closing Time”).

Payment shall be made to the Company by wire transfer of immediately available funds to the bank account designated by the Company against delivery to the Underwriters of the Shares to be purchased by the Underwriters.

SECTION 3. Covenants of the Company. The Company covenants with the Underwriters as follows:

(a) Compliance with Securities Regulations and Commission Requests. The Company, subject to Section 3(b), will comply with the requirements of Rule 430A, and will notify the Underwriters as soon as practicable (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Time of Sale Prospectus or the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the Securities Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the Securities Act in connection with the offering of the Shares. The Company will effect all filings required under Rule 424(b) in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)). The Company will make every commercially reasonable effort to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof as soon as practicable.

(b) Continued Compliance with Securities Laws. The Company will comply with the Securities Act and the Securities Act Regulations so as to permit the completion of the distribution of the Shares as contemplated in this Agreement and in the Registration Statement, Time of Sale Prospectus and Prospectus. If at any time when a prospectus relating to the Shares is (or, but for the exception afforded by Rule 172 of the Securities Act Regulations (“Rule 172”), would be) required by the Securities Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the Time of Sale Prospectus or the Prospectus in order that the Time of Sale Prospectus or the Prospectus, as the case may be, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the Time of Sale Prospectus or the Prospectus, as the case may be, in order to comply with the requirements of the Securities Act or the Securities Act Regulations, the Company will promptly (A) give the Underwriters notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the Time of Sale Prospectus or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Underwriters with copies of any such amendment

or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Underwriters or counsel for the Underwriters shall reasonably object. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request.

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

(d) **Delivery of Prospectuses.** The Company has delivered to the Underwriters, without charge, as many copies of each preliminary prospectus as the Underwriters reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the Securities Act. The Company will furnish to the Underwriters, without charge, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the Securities Act, such number of copies of the Prospectus (as amended or supplemented) as the Underwriters may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) **Blue Sky Qualifications.** The Company will cooperate with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Underwriters may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Shares; provided, however, that the Company shall not be obligated to file any general consent or otherwise subject itself to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(f) **Rule 158.** The Company will timely file such reports pursuant to the Exchange Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the Securities Act.

(g) **Use of Proceeds.** The Company will use the net proceeds received by it from the sale of the Shares in the manner specified in the Registration Statement, Time of Sale Prospectus and Prospectus under "Use of Proceeds."

(h) **Restriction on Sale of Securities.** During a period of 45 days from the date of the Prospectus (the “Lock-Up Period”), the Company will not, without the prior written consent of the Representative, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the Securities Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. Further, during the Lock-Up Period, the Company will not, without the prior written consent of the Representative, open a trading window, as described in the Company’s Insider Trading Compliance Policy as in effect as of the date hereof. The foregoing sentence shall not apply to (A) the Shares to be sold hereunder, (B) any Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof or at the Closing Time and referred to in the Registration Statement, Time of Sale Prospectus and Prospectus, (C) any grants of Common Stock, share options, restricted shares, notional units or other equity or equity-based securities to employees, directors, contractors, or other individuals eligible to receive awards pursuant to the terms of any plan in effect as of the Closing Time and described in the Registration Statement, Time of Sale Prospectus and Prospectus, or the issuance of Common Stock pursuant to the exercise, vesting, or settlement of any award granted pursuant to the Company’s equity incentive plans that are described in the Registration Statement, Time of Sale Prospectus and Prospectus, (D) any Common Stock issued pursuant to any non-employee director share plan or dividend reinvestment plan referred to in the Registration Statement, Time of Sale Prospectus and Prospectus, (E) enter into an agreement to issue shares of Common Stock, or securities convertible into Common Stock in connection with mergers or acquisition transactions, joint ventures or other strategic corporate transactions, (F) any shares of Common Stock expected to be issued by the Company in connection with the refinancing of certain of the Company’s indebtedness, in such number and as described in the Registration Statement, Time of Sale Prospectus and Prospectus, (G) any shares of preferred stock and any shares of Common Stock underlying such preferred stock expected to be issued by the Company in connection with the exchange of preferred stock as described in the Registration Statement, Time of Sale Prospectus and Prospectus and (H) any registration statement on Form S-8 under the Securities Act with respect to the foregoing clauses (B), (C) and (D); provided that, the holders of Common Stock issued pursuant to (B), (C) or (D) above agree to execute a lock-up letter described in Error! Reference source not found. hereof (to the extent such holder has not previously signed a lock-up letter covering such Class A Shares) or such Class A Shares do not vest until after the expiry of the Lock-Up Period.

(i) **Reporting Requirements.** The Company, during the period when the Prospectus is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the Securities Act, will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods required by the Exchange Act and Exchange Act Regulations. Additionally, the Company shall report the use of proceeds from the issuance of the Securities as may be required under Rule 463 under the Securities Act.

(j) **Issuer Free Writing Prospectuses.** The Company agrees that, unless it obtains the prior written consent of the Underwriters, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus,” or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Underwriters will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B-2 hereto and any “road show that is a written communication” within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Underwriters. The Company represents that it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Underwriters as an “issuer free writing prospectus,” as defined in Rule 433, and that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Underwriters and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission. Each Underwriter represents that it has not made, and agrees that, without the prior consent of the Company, it will not make any offer relating to the Securities that would constitute a “free writing prospectus” required to be filed by the Company with the Commission or retained by the Company under Rule 433.

(k) **Shelf Securities.** If the third anniversary of the initial effective date of the Registration Statement occurs before all the Shares have been sold by the Underwriters, prior to the third anniversary to file a new shelf registration statement and to take any other action necessary to permit the public offering of the Shares to continue without interruption; references herein to the Registration Statement shall include the new registration statement effective upon filing thereof with the Commission or declared effective by the Commission, as applicable.

(l) **Rule 462(b) Registration Statement.** If the Company elects to rely upon Rule 462(b), the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) by 10:00 P.M., Washington, D.C. time, on the date of this Agreement, and the Company shall at the time of filing either pay to the Commission the filing fee for the Rule 462(b) Registration Statement or give irrevocable instructions for the payment of such fee pursuant to Rule 111(b) under the Securities Act.

SECTION 4. Payment of Expenses.

(a) **Expenses.** The Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement other than to the extent described in Section 4(b) below, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or

supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) the preparation, issuance and delivery of the certificates for the Shares to the Underwriters, if any, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Shares to the Underwriters, (iv) the fees and disbursements of the counsel, accountants and other advisors of the Company, (v) the qualification of the Shares under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable and documented fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto; provided, however, that all such fees and disbursements of counsel shall not exceed \$15,000, (vi) the fees and expenses of any transfer agent or registrar for the Shares, (vii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the Shares, including without limitation, expenses associated with the production of road show slides and graphics, reasonable and documented fees and expenses of any consultants engaged with the consent of the Company in connection with the road show presentations, travel and lodging expenses of the representatives of the Company (which, for the avoidance of doubt, does not include the Underwriters for purposes of this Section 4(a)(vii)) and officers of the Company and any such consultants, as well as one half (50%) of the cost of aircraft and other transportation chartered in connection with the road show, (viii) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by FINRA of the terms of the sale of the Shares (such counsel fees not to exceed \$35,000) and (ix) the fees and expenses incurred in connection with the listing of the Shares on the Nasdaq Global Select Market. It is understood that, except as provided in clause (a) of this Section 4, the Underwriters will pay all of its own costs and expenses, including the fees of its counsel, stock transfer taxes on resale of any of the Shares by it, and any advertising expenses connected with any offers it may make.

(b) Termination of Agreement. If this Agreement is terminated by the Underwriters in accordance with the provisions of Section 5, Section 9(a)(i) or (iii), or Section 11 hereof, the Company shall reimburse the Underwriters through the Representative for all of their reasonable and documented out of pocket expenses that were actually incurred, including the reasonable fees and disbursements of counsel for the Underwriters.

SECTION 5. Conditions of Underwriters' Obligations. The obligations of the Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) Effectiveness of Registration Statement; Rule 430A Information. The Registration Statement, including any Rule 462(b) Registration Statement, has become effective and, at the Closing Time, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the Securities Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the knowledge of the Company, threatened by the Commission; and the Company has complied with each request (if any) from the Commission for additional information. A prospectus containing the Rule 430A Information shall have been filed with the Commission in the manner and within the time frame

required by Rule 424(b) without reliance on Rule 424(b)(8) or a post-effective amendment providing such information shall have been filed with, and declared effective by, the Commission in accordance with the requirements of Rule 430A. If the Company has elected to rely upon Rule 462(b) under the Securities Act, the Rule 462(b) Registration Statement shall have become effective by 10:00 P.M., Washington, D.C. time.

(b) **Opinion of Counsel for Company.** At the Closing Time, the Underwriters shall have received the opinion, dated the Closing Time, of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the General Corporation Law of the State of Delaware and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Underwriters. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its subsidiaries and certificates of public officials.

(c) **Opinion of Counsel for Underwriters.** At the Closing Time, the Underwriters shall have received the opinion, dated the Closing Time, of Vinson & Elkins L.L.P., counsel for the Underwriters, in form and substance satisfactory to the Underwriters. In giving such opinion such counsel may rely, as to all matters governed by the laws of jurisdictions other than the law of the State of New York, the General Corporation Law of the State of Delaware and the federal securities laws of the United States, upon the opinions of counsel satisfactory to the Underwriters. Such counsel may also state that, insofar as such opinion involves factual matters, they have relied, to the extent they deem proper, upon certificates of officers and other representatives of the Company and its subsidiaries and certificates of public officials.

(d) **Officers' Certificate.** At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement, the Time of Sale Prospectus or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings or business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, and the Underwriters shall have received a certificate of the Chief Executive Officer of the Company, in his capacity as such officer only, and of the chief financial or chief accounting officer of the Company, in their respective capacities as such officers only, dated the Closing Time, to the effect that (i) the representations and warranties of the Company in this Agreement are true and correct, in the case of representations and warranties which are qualified as to materiality, and true and correct in all material respects, in the case of representations and warranties that are not so qualified, with the same force and effect as though expressly made at and as of the Closing Time, (ii) the Company has complied with all agreements and satisfied all conditions on their part to be performed or satisfied at or prior to the Closing Time, and (iii) no stop order suspending the effectiveness of the Registration Statement under the Securities Act has been issued, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to their knowledge, threatened by the Commission.

(e) **Accountant's Comfort Letter.** At the time of the execution of this Agreement, the Underwriters shall have received from Ernst & Young LLP a letter, dated such date, in form and

substance satisfactory to the Underwriters, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in and incorporated by reference into the Registration Statement, Time of Sale Prospectus and Prospectus.

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

(g) [Reserved]

(h) **Approval of Listing.** At the Closing Time, the Shares shall have been approved for listing on the Nasdaq Global Select Market, subject only to official notice of issuance.

(i) **Lock-up Agreements.** At the date of this Agreement, the Underwriters shall have received an agreement substantially in the form of Exhibit B hereto signed by the persons listed on Schedule C hereto.

(j) **No Objection.** FINRA has confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements relating to the offering of the Shares.

(k) **Additional Documents.** At the Closing Time counsel for the Underwriters shall have been furnished with such documents and opinions as they may require for the purpose of enabling them to pass upon the issuance and sale of the Shares as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Shares as herein contemplated shall be satisfactory in form and substance to the Underwriters and counsel for the Underwriters.

(l) **Termination of Agreement.** If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the Underwriters by notice to the Company at any time at or prior to Closing Time, and such termination shall be without liability of any party to any other party except as provided in Section 4 and except that Sections 1, 6, 7, 8, 15, 16 and 17 shall survive any such termination and remain in full force and effect.

SECTION 6. Indemnification.

(a) **Indemnification of Underwriters.** The Company agrees to indemnify and hold harmless each Underwriter, each of its affiliates (as such term is defined in Rule 405 under the Securities Act (each, an "Affiliate")), officers, directors, and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430A Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in any preliminary prospectus, any Issuer Free Writing Prospectus, the Time of Sale Prospectus, any road show as defined in Rule 433(h) under the Securities Act (a “road show”), any Written Testing-the-Waters Communication or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that any such settlement is effected with the written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed;

(iii) against any and all expense whatsoever, as incurred (including the reasonable fees and disbursements of counsel chosen by such Underwriter), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity provision shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in the Registration Statement (or any amendment thereto), including the Rule 430A Information, any Issuer Free Writing Prospectus, any preliminary prospectus, Time of Sale Prospectus, roadshow, Written Testing-the-Waters Communication or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) Indemnification of Company and Directors and Officers of the Company. Each Underwriter, severally and not jointly, agrees to indemnify and hold harmless the Company, each director of the Company and each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430A Information, any preliminary prospectus, the Time of Sale Prospectus or the Prospectus (or any amendment or

supplement thereto) or any Issuer Free Writing Prospectus or roadshow in reliance upon and in conformity with the Underwriter Information.

(c) **Actions against Parties; Notification.** In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 6(a) or 6(b), such person (the “indemnified party”) shall promptly notify the person against whom such indemnity may be sought (the “indemnifying party”) in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by Underwriters, in the case of parties indemnified pursuant to Section 6(a), and by the Company, in the case of parties indemnified pursuant to Section 6(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

SECTION 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Shares pursuant to this Agreement or (ii) if the allocation provided

by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as (i) the total net proceeds from the offering of the Shares (before deducting expenses) received for the Shares by the Company, and (ii) the difference between (a) the aggregate price to the public received by the Underwriters and (b) the aggregate price paid by the Underwriters to the Company for the Shares, bear to the aggregate price to public received for the Shares by such Underwriter.

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

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

Notwithstanding the provisions of this Section 7, each Underwriter shall not be required to contribute any amount in excess of the underwriting discounts received by such Underwriter in connection with the Shares underwritten by it and distributed to the public.

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

For purposes of this Section 7, each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and such Underwriter's Affiliates, officers, directors, employees and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company.

SECTION 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Underwriters or their respective Affiliates or selling agents, any person controlling the Underwriters, their respective officers or directors, any person controlling the Company and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) **Termination.** The Representative may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, in the judgment of the Representative, since the time of execution of this Agreement or since the respective dates as of which information is given in the Registration Statement, the Time of Sale Prospectus or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representative, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Shares, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the Nasdaq Global Select Market, or (iv) if trading generally on the NYSE Amex Equities or the New York Stock Exchange or in the Nasdaq Global Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, or (vi) if a banking moratorium has been declared by either Federal or New York authorities.

(b) **Liabilities.** If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7, 8, 15, 16 and 17 shall survive such termination and remain in full force and effect.

SECTION 10. Defaulting Underwriters. If, at the Closing Time any one or more of the Underwriters shall fail or refuse to purchase Shares that it has or they have agreed to purchase hereunder on such date, and the aggregate number of Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one tenth of the aggregate number of the Shares to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the number of Shares set forth opposite their respective names in Schedule A bears to the aggregate number of Shares set forth opposite the names of all such non defaulting Underwriters, or in such other proportions as the Representative may specify, to purchase the Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; provided that in no event shall the number of Shares that any

Underwriter has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 10 by an amount in excess of one ninth of such number of Shares without the written consent of such Underwriter. If, at the Closing Time, any Underwriter or Underwriters shall fail or refuse to purchase Shares and the aggregate number of Shares with respect to which such default occurs is more than one tenth of the aggregate number of Shares to be purchased on such date, and arrangements satisfactory to the Representative and the Company for the purchase of such Shares are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company. In any such case either the Representative or the Company shall have the right to postpone the Closing Time, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement, in the Time of Sale Prospectus, in the Prospectus or in any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

SECTION 11. Default by the Company. If the Company shall fail at the Closing Time to sell the number of Shares that it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any non-defaulting party; provided, however, that the provisions of Sections 1, 4, 7, 8, 14, 15 and 16 shall remain in full force and effect. No action taken pursuant to this Section shall relieve the Company from liability, if any, in respect of such default.

SECTION 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication.

Notices to the Underwriters shall be directed to:

Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036
Attention: Equity Syndicate Desk, with a copy to the Legal Department

with a copy to:

Vinson & Elkins L.L.P.
845 Texas Avenue, Suite 4700
Houston, Texas 77002
Attention: David P. Oelman, Benjamin Heriaud

Notices to the Company shall be directed to:

New Fortress Energy Inc.
111 W. 19th Street, 8th Floor
New York, New York 10011
Attention: Cameron D. MacDougall, Esq.

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001
Attention: Michael J. Schwartz

SECTION 13. No Advisory or Fiduciary Relationship. The Company agrees that (a) the purchase and sale of the Shares pursuant to this Agreement, is an arm's-length commercial transaction between the Company, on the one hand, and the Underwriters, on the other hand, (b) in connection with the offering of the Shares and the process leading thereto, the Underwriters are and have been acting solely as a principals and is not the agents or fiduciaries of the Company, any of their subsidiaries, or their respective shareholders, creditors, employees or any other party, (c) the Underwriters have not assumed nor will they assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Shares or the process leading thereto (irrespective of whether any of the Underwriters have advised or are currently advising either of the Company or any of their subsidiaries on other matters) and the Underwriters have no obligation to the Company with respect to the offering of the Shares except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering of the Shares and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate. The Company hereby waive any claims that the Company may have against the Underwriter with respect to any breach of fiduciary duty in connection with the Securities.

SECTION 14. Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters and the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters and the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters and the Company and their respective successors, and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from the Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 15. TRIAL BY JURY. THE COMPANY (ON ITS BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS SHAREHOLDERS AND AFFILIATES) AND THE UNDERWRITERS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 16. GOVERNING LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT

SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

SECTION 17. Consent to Jurisdiction; Waiver of Immunity. Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby (“Related Proceedings”) shall be instituted in (i) the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan or (ii) the courts of the State of New York located in the City and County of New York, Borough of Manhattan (collectively, the “Specified Courts”), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a “Related Judgment”), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 18. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

SECTION 19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

SECTION 20. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 21. Recognition of the U.S. Special Resolutions Regimes.

(a) In the event that any Underwriter is a Covered Entity (as defined below) and becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (each, a “U.S. Special Resolution Regime”), the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the applicable U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter is a Covered Entity or a BHC Act Affiliate (as defined below) of any Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights (as defined below) under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section 21:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. Sec. 252.82(b);

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. Sec. 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. Sec. 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. Sec. Sec. 252.81, 47.2 or 382.1 as applicable.

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

NEW FORTRESS ENERGY INC.

By /s/ Christopher Guinta
Name: Christopher Guinta
Title: Chief Financial Officer

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

MORGAN STANLEY & CO. LLC

By /s/ Marcelo Dominguez
Name: Marcelo Dominguez
Title: Vice-President

For themselves and the other several Underwriters named in Schedule A to the foregoing Agreement.

Signature Page to Underwriting Agreement

SCHEDULE A

Name of Underwriter	Number of Shares
Morgan Stanley & Co. LLC.....	20,940,598
Natixis Securities Americas LLC.	6,959,451
MUFG Securities Americas Inc.....	4,639,634
Santander US Capital Markets LLC.	3,062,158
HSBC Securities (USA) Inc.....	2,319,817
Credit Agricole Securities (USA) Inc.	1,855,854
Deutsche Bank Securities Inc..	1,855,854
Jefferies LLC.....	1,855,854
Mizuho Securities USA LLC.....	1,546,545
TCBI Securities Inc.....	927,927
Tuohy Brothers Investment Research, Inc..	386,250
Total.....	<u>46,349,942</u>

SCHEDULE A-1

<u>Purchaser of Directed Shares</u>	<u>Number of Directed Shares</u>
Edens Family Partners LLC	5,793,742
Total	5,793,742

SCHEDULE B-1

Pricing Terms

Public offering price per Share: \$8.63

Offering size: \$400.0 million

SCHEDULE B-2

Issuer Free Writing Prospectuses

None

SCHEDULE C

List of Persons and Entities Subject to Lock-up

Wesley R. Edens
Christopher S. Guinta
Yunyoung Shin
Randal A. Nardone
Edens Family Holdings LLC
Wesley R. Edens 2012 Trust LLC
Nardone Family Partners LLC

SCHEDULE D

Presentation entitled “NFE Capital Structure Considerations” dated August 29, 2024.
Presentation entitled “NFE Capital Market Transactions” dated September 29, 2024.

EXHIBIT A

[Reserved]

EXHIBIT B

Form of lock-up from directors, officers or other shareholders pursuant to Error! Reference source not found.

October [●], 2024

Morgan Stanley & Co. LLC

Re: New Fortress Energy Inc. Lock-Up Agreement

Dear Sirs or Madames:

The undersigned, a shareholder and/or an officer and/or director of New Fortress Energy Inc., a Delaware corporation (the “Company”), understands that Morgan Stanley & Co. LLC (the “Representative”) proposes to enter into an Underwriting Agreement (the “Underwriting Agreement”) with the Company providing for the public offering of Class A common stock, par value \$0.01 per share of the Company (the “Shares”). In recognition of the benefit that such an offering will confer upon the undersigned as a shareholder and/or an officer and/or director of the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with the underwriter to be named in the Underwriting Agreement that, during the period beginning on the date hereof and ending on the date that is 45 days from the date of the Underwriting Agreement (subject to extensions as discussed below), the undersigned will not, without the prior written consent of the Representative, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any Shares or any securities convertible into or exchangeable or exercisable for Shares, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the “Lock-Up Shares”), or exercise any right with respect to the registration of any of the Lock-up Shares, or file or cause to be filed any registration statement in connection therewith, under the Securities Act of 1933, as amended, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Shares, whether any such swap or transaction is to be settled by delivery of Lock-Up Shares, in cash or otherwise.

If the undersigned is an officer or director of the Company, (1) the Representative agrees that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of Lock-Up Shares, the Representative will notify the Company of the impending release or waiver, and (2) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representative hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (i) the release or waiver is effected solely to permit a transfer not for consideration and (ii) the transferee has agreed in writing to be bound by the same terms described

in this letter to the extent and for the duration that such terms remain in effect at the time of the transfer.

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer the Lock-Up Shares without the prior written consent of the Representative, provided that, (1) with respect to (i), (ii), (iii) and (iv) (irrespective of whether such transfer involves a disposition of value, to the extent permitted by this Agreement), the Representative receives a signed lock-up agreement for the balance of the lockup period from each donee, trustee, distributee, or transferee, as the case may be, (2) any transfer described under (i), (ii) or (iii) below shall not involve a disposition for value, (3) the transfers described in (i), (ii), (iii) and (iv) (irrespective of whether such transfer involves a disposition of value, to the extent permitted by this Agreement) are not required to be reported with the Securities and Exchange Commission on Form 4 in accordance with Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (4) in the case of (i), (ii), (iii) and (iv), the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers (other than a filing on Form 5 made after the expiration of the 45-day period referred to above) and (5) in the case of a transfer described in (v), (a) any securities received upon such exercise shall be subject to this agreement, (b) no filing under Section 16 of the Exchange Act, or other public announcement, shall be voluntarily made during the Lock-Up Period and (c) any filing required to be made pursuant to Section 16 of the Exchange Act shall clearly indicate that the filing relates to the circumstances described in clause (v), irrespective of whether such transfer involves a disposition of value, to the extent permitted by this Agreement:

- (i) as a bona fide gift or gifts;
- (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned (for purposes of this agreement, "immediate family" shall mean any relationship by blood, marriage or adoption, not more remote than first cousin);
- (iii) as a distribution to limited partners, members or stockholders of the undersigned;
- (iv) to the undersigned's affiliates or to any investment fund or other entity controlled or managed by the undersigned; or
- (v) to the Company in connection with the net exercise or net settlement of an award granted under a compensatory plan of the Company adopted prior to the Public Offering.

In addition, the undersigned may establish a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Lock-Up Shares during the Lock-Up Period, provided that (i) such plan does not provide for the transfer of Lock-Up Shares during the Lock-Up Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Lock-Up Shares may be made under such plan during the Lock-Up Period.

Furthermore, the undersigned may sell Lock-Up Shares of the Company purchased by the undersigned on the open market following the Public Offering if and only if (i) such sales are not required to be reported in any public report or filing with the Securities and Exchange Commission, or otherwise and (ii) the undersigned does not otherwise voluntarily effect any public filing or report regarding such sales.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Lock-Up Shares except in compliance with the foregoing restrictions.

This agreement shall lapse and become null and void if (i) prior to entering the Underwriting Agreement, the Company notifies the Representative in writing that the Company does not intend to proceed with the offering of the Lock-Up Shares through the Representative and files an application to withdraw the registration statement related to the offering, or (ii) for any reason the Underwriting Agreement is terminated prior to the Closing Time (as defined therein).

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

Very truly yours,

Signature: _____

Print Name: _____

Certificate of Designations
4.8% Series B Convertible Preferred Stock
of New Fortress Energy Inc.

October 1, 2024

On September 23, 2024, the Board of Directors of New Fortress Energy Inc., a Delaware corporation (the “Corporation”), adopted the following resolution designating and creating, subject to and conditioned upon the consummation of the transactions contemplated by the Series B Exchange Agreement, out of the authorized and unissued Preferred Shares (as defined in the Certificate of Incorporation) of the Corporation, 96,746 authorized shares of a series of Preferred Shares of the Corporation titled the “4.8% Series B Convertible Preferred Stock”:

RESOLVED that, pursuant to the authority of the Board of Directors pursuant to the Certificate of Incorporation, the Bylaws and applicable law, a series of Preferred Shares of the Corporation titled the “4.8% Series B Convertible Preferred Stock,” and having a par value of \$0.01 per share and an initial number of authorized shares equal to ninety-six thousand seven hundred forty-six (96,746), is hereby designated and created, subject to and conditioned upon the consummation of the transactions contemplated by the Series B Exchange Agreement, out of the authorized and unissued Preferred Shares of the Corporation, which series has the rights, designations, preferences, voting powers and other provisions set forth below:

1. DEFINITIONS.

“Affiliate” of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person.

“Annualized EBITDA” has the meaning given to the term “Annualized EBITDA” as set forth in the Credit Agreement.

“Board of Directors” means the Corporation’s board of directors or a committee of such board duly authorized to act with the authority of such board.

“Business Day” means any calendar day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“Bylaws” means the Bylaws of the Corporation, effective as of August 7, 2020, as the same may be further amended or restated.

“Capital Stock” of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case, however designated, the equity of such Person, but excluding any debt securities convertible into such equity.

“Cash Settlement” has the meaning set forth in Section 7(c).

“Certificate of Designations” means this Certificate of Designations, as amended from time to time.

“Certificate of Incorporation” means the Corporation’s Certificate of Incorporation dated as of August 3, 2020, as the same has been and may be further amended or restated.

“Change Event” means a (a) Fundamental Change, (b) Debt Ratio Event or (c) Downgrade Event.

“Change Event Repurchase Right” has the meaning set forth in Section 8(a)(i).

“Close of Business” means 5:00 p.m., New York City time.

“Common Stock” means the Class A common stock, \$0.01 par value per share, of the Corporation, subject to Section 10(h).

“Common Stock Change Event” has the meaning set forth in Section 10(h)(i).

“Consolidated First Lien Debt” has the meaning given to the term “Consolidated First Lien Debt” as set forth in the Credit Agreement.

“Consolidated First Lien Debt Ratio” means the ratio, as of any date of determination, of (a) the Consolidated First Lien Debt outstanding as of the last day of the fiscal quarter most recently ended for which financial statements are internally available on or prior to such date of determination, to (b) Annualized EBITDA, in each case of the Corporation and its Subsidiaries on a consolidated basis.

“Continuing Share Reserve Requirement” means, as of any time, a number of shares of Common Stock equal to the product of (a) 1.5 and (b) the number of shares of Common Stock that would be deliverable (without regard to Section 10(g)) upon conversion of all Convertible Preferred Stock outstanding as of such time (assuming such conversion occurred as of such time).

“Control” (including its correlative meanings “under common Control with” and “Controlled by”) means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

“Conversion Agent” has the meaning set forth in Section 3(e).

“Conversion Consideration” means, with respect to the conversion of any Convertible Preferred Stock, the type and amount of consideration payable or deliverable to settle such conversion, determined in accordance with Section 10.

“Conversion Price” initially means \$9.9645 per share of Common Stock; provided, however, that the Conversion Price shall be adjusted downward to be 105% of the price per share of Common Stock that the Corporation agrees to issue and sell in a primary offering at any time after the Initial Issue Date and prior to December 31, 2024 if such per share amount in the

primary offering is less than \$9.49 per share of Common Stock; provided further that the Conversion price is subject to further adjustment pursuant to Sections 10(e) and 10(f). Each reference in this Certificate of Designations to the Conversion Price as of a particular date without setting forth a particular time on such date will be deemed to be a reference to the Conversion Price immediately before the Close of Business on such date.

“Conversion Share” means any share of Common Stock delivered or deliverable upon conversion of any Convertible Preferred Stock.

“Convertible Preferred Stock” has the meaning set forth in Section 3(a).

“Corporation” has the meaning set forth in the preliminary paragraph hereto.

“Corporation Event Notice” has the meaning set forth in Section 8(e).

“Credit Agreement” means the Credit Agreement, dated as of April 15, 2021, by and among the Corporation, as the borrower, the guarantors from time to time party thereto, the several lenders and issuing banks from time to time party thereto and MUFG Bank, Ltd., as administrative agent and collateral agent, as amended and in effect as of the date of the Series B Exchange Agreement.

“Daily VWAP” means, for each of the Trading Days during the relevant period, the per share volume-weighted average price of the Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NFE <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Corporation). The “Daily VWAP” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session.

“Debt Ratio Event” means the Corporation’s Consolidated First Lien Debt Ratio exceeds 4.0 to 1.0 as of any date of determination.

“Deficit Shares” has the meaning set forth in Section 10(g)(i)(1).

“Distribution Transaction” means any transaction by which a Subsidiary of the Corporation ceases to be a Subsidiary of the Corporation by reason of the distribution of such Subsidiary’s equity securities to holders of Common Stock, whether by means of a spin-off, split-off, redemption, reclassification, exchange, stock dividend, share distribution, rights offering or similar transaction.

“Distribution Transaction Valuation Period” has the meaning set forth in Section 10(e)(i)(3)(B).

“Dividend Payment Date” means, with respect to any share of Convertible Preferred Stock, each March 31, June 30, September 30 and December 31 of each year, beginning on December 31, 2024 (or beginning on such other date specified in the Certificate evidencing such share).

“Dividend Period” means each period from, and including, a Dividend Payment Date (or, in the case of the first Dividend Period, from, and including, the Initial Issue Date) to, but excluding, the next Dividend Payment Date.

“Dividend Rate” means four and eight-tenths percent (4.8%) per annum.

“Dividend Record Date” has the following meaning: (a) March 15th, in the case of a Dividend Payment Date occurring on March 31st; (b) June 15th, in the case of a Dividend Payment Date occurring on June 30th; (c) September 15th, in the case of a Dividend Payment Date occurring on September 30th; and (d) December 15th, in the case of a Dividend Payment Date occurring on December 31st.

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

“Downgrade Event” means a downgrade of at least one notch of the Corporation’s credit rating (including a one notch downgrade within rating categories as well as between rating categories) by at least two of the Ratings Agencies, or by any other their respective successors. In determining whether the Corporation’s credit rating has been downgraded by one or more notches, notches within rating categories, namely + or - for S&P and Fitch, and 1, 2, and 3 for Moody’s, will be taken into account; for example, in the case of S&P, a rating decline either from BB+ to BB or BB- to B+ will constitute a decrease of one notch.

“Equity Treatment Limitation” has the meaning set forth in Section 10(g)(i)(1).

“Event” means either a Change Event or a Share Event, as the context requires.

“Ex-Dividend Date” means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

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

“Expiration Date” has the meaning set forth in Section 10(e)(i)(5).

“Expiration Time” has the meaning set forth in Section 10(e)(i)(5).

“Fundamental Change” means the occurrence of any of the following events, whether in a single transaction or a series of related transactions:

(a) the Corporation becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), including any group acting for the purpose of acquiring, holding or disposing of Capital Stock of the Corporation (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase, of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) representing more than 50.0% of the total voting power of all of the outstanding Voting Stock of the Corporation, unless the Permitted Holders otherwise have the right (pursuant to contract, proxy or otherwise), directly or indirectly, to designate, nominate or appoint directors having a majority of the aggregate votes on the Board of Directors of the Corporation;

(b) the consummation of (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (ii) any share exchange, consolidation or merger of the Corporation pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (iii) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Corporation and its Subsidiaries, taken as a whole, to any Person other than one of the Corporation's Wholly Owned Subsidiaries; provided, however, that a transaction described in clause (i) or (ii) in which the holders of the Corporation's Voting Stock immediately prior to such transaction own, directly or indirectly, more than 50% of the voting power of all outstanding Voting Stock of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction, with such holders' proportional voting power immediately after such transaction being in substantially the same proportions as their respective voting power before such transaction, shall not be a Fundamental Change; or

(c) neither shares of Common Stock nor shares of any other Capital Stock into which the Convertible Preferred Stock is convertible are listed for trading on any United States national securities exchange or all such shares cease to be traded in contemplation of a de-listing (other than as a result of a transaction described in clause (b) above).

Notwithstanding anything to the contrary in this definition or any provision of Rule 13d-3 or Rule 13d-5 of the Exchange Act, (i) a Person or group shall not be deemed to beneficially own Voting Stock (x) to be acquired by such Person or group pursuant to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement or (y) solely as a result of veto or approval rights in any joint venture agreement, shareholder agreement, investor rights agreement or other similar agreement, (ii) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Voting Stock of the Corporation owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of determining whether a Fundamental Change has occurred, (iii) a Person or group (other than Permitted Holders) will not be deemed to beneficially own Voting

Stock of another Person as a result of its ownership of Capital Stock or other securities of such other Person's parent (or related contractual rights) unless it owns more than 50.0% of the total voting power of the Voting Stock of such Person's parent and (iv) the right to acquire Voting Stock (so long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

For the purposes of this definition, any transaction or event described in both clause (a) and in clause (b) above (without regard to the proviso in clause (b)) will be deemed to occur solely pursuant to clause (b) above (subject to such proviso).

"Holder" means a person in whose name any Convertible Preferred Stock is registered on the Register.

"Initial Issue Date" means the "Exchange Closing Date" as set forth in the Series B Exchange Agreement.

"Initial Share Reserve Requirement" means a number of shares of Common Stock equal to the product of (a) 1.5 and (b) the number of shares of Common Stock that would be deliverable (without regard to Section 10(g)) upon conversion of all Convertible Preferred Stock outstanding as of the Initial Issue Date (assuming such conversion occurred on the Initial Issue Date).

"Junior Securities" means collectively, the Common Stock and each other class or series of Capital Stock now existing or hereafter authorized, classified or reclassified, the terms of which do not expressly provide that such class or series ranks on a parity basis with or senior to the Convertible Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

"Last Reported Sale Price" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of the Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm the Corporation selects.

"Liquidation Preference" means one thousand dollars (\$1,000.00) per share of Convertible Preferred Stock.

"Majority Holders" means the Holders constituting at least a majority of the outstanding voting power of the Convertible Preferred Stock.

“Market Disruption Event” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“Number of Reserved Shares” means, as of any time, the number of shares of Common Stock that, at such time, the Corporation has reserved (out of its authorized but unissued shares of Common Stock that are not reserved for any other purpose) for delivery upon conversion of the Convertible Preferred Stock.

“Open of Business” means 9:00 a.m., New York City time.

“Optional Conversion” means the conversion of any Convertible Preferred Stock pursuant to the terms of this Agreement.

“Optional Conversion Date” means, with respect to the Optional Conversion of any Convertible Preferred Stock, the first Business Day on which the requirements set forth in Section 10(c)(i) for such conversion are satisfied.

“Optional Conversion Notice” has the meaning set forth in Section 10(c).

“Parity Securities” means any class or series of Capital Stock, the terms of which expressly provide that such class ranks pari passu with the Convertible Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary bankruptcy, liquidation, dissolution or winding up of the affairs of the Corporation.

“Paying Agent” has the meaning set forth in Section 3(e)(i).

“Permitted Holders” has the meaning set forth in the Credit Agreement.

“Person” or “person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Certificate of Designations.

“Ratings Agencies” means Fitch Ratings, Inc., S&P Global and Moody’s Investors Service, Inc.

“Record Date” means, with respect to any dividend or distribution on, or issuance to holders of, Convertible Preferred Stock or Common Stock, the date fixed (whether by law, contract or the Board of Directors or otherwise) to determine the Holders or the holders of Common Stock, as applicable, that are entitled to such dividend, distribution or issuance.

“Redemption” has the meaning set forth in Section 7(b).

“Redemption Date” has the meaning set forth in Section 7(d).

“Redemption Election Notice” has the meaning set forth in Section 7(g).

“Redemption Notice” has the meaning set forth in Section 7(e).

“Redemption Price” has the meaning set forth in Section 7(c).

“Redemption Settlement Method” has the meaning set forth in Section 7(c).

“Reference Property” has the meaning set forth in Section 10(h)(i).

“Reference Property Unit” has the meaning set forth in Section 10(h)(i).

“Register” has the meaning set forth in Section 3(e)(ii).

“Registrar” has the meaning set forth in Section 3(e)(i).

“Repurchase” means either a Repurchase Upon Change Event or a Repurchase Upon Share Event, as the context requires.

“Repurchase Date” has the meaning set forth in Section 8(d).

“Repurchase Election Notice” has the meaning set forth in Section 8(h).

“Repurchase Notice” means a notice (including a notice substantially in the form of the “Repurchase Notice” set forth in Exhibit A-6) containing the information, or otherwise complying with the requirements, set forth in Section 8(f).

“Repurchase Notice Deadline” means the 30th calendar day after the date the Corporation provides the Corporation Event Notice pursuant to Section 8(c).

“Repurchase Price” has the meaning set forth in Section 8(d).

“Repurchase Right” means either a Change Event Repurchase Right or a Share Event Repurchase Right, as the context requires.

“Repurchase Settlement Method” has the meaning set forth in Section 8(d).

“Repurchase Upon Change Event” has the meaning set forth in Section 8(a)(i).

“Repurchase Upon Share Event” has the meaning set forth in Section 8(a)(ii).

“Restricted Stock Legend” means a legend substantially in the form set forth in Exhibit B.

“Return on Investment” means, with respect to any share of Convertible Preferred Stock, as of any date of determination, the quotient of (i) all cash payments made in connection with a Redemption and other cash payments made by the Corporation in respect of such share of

Convertible Preferred Stock (including all cash Dividends paid up to and including the Redemption Date) divided by (ii) \$1,000.

“Rule 144” means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

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

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

“Security” means any Convertible Preferred Stock or Conversion Share.

“Senior Securities” means any class or series of Capital Stock, the terms of which expressly provide that such class or series ranks senior to the Convertible Preferred Stock, has preference or priority over the Convertible Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

“Series A Exchange Agreement” means that certain Share Exchange Agreement by and among the Corporation, Portocem Geração de Energia S.A. and Ceiba Energy Fundo de Investimento em Participações Multiestratégia - Investimento no Exterior, dated as of December 22, 2023.

“Series A Issue Date” means March 20, 2024.

“Series B Exchange Agreement” means that certain Exchange Agreement by and between the Corporation and Ceiba Energy US LP, dated as of September 23, 2024, as may be amended, supplemented or otherwise modified from time to time, with respect to certain terms and conditions concerning, among other things, the rights of and restrictions on the Holders.

“Share Agent” means the Transfer Agent or any Registrar, Paying Agent or Conversion Agent.

“Share Event” means the occurrence of the Share Price Condition.

“Share Event Repurchase Right” has the meaning set forth in Section 8(a)(ii).

“Share Price Condition” means that, as of the 30th Trading Day following the three year anniversary of the Series A Issue Date, the arithmetic average of the Daily VWAPs of the Common Stock for the thirty (30) consecutive Trading Day period beginning on first Trading Day following the three year anniversary of the Series A Issue Date is less than the then-applicable Conversion Price.

“Stock Settlement” has the meaning set forth in Section 7(c).

“Subsidiary” with respect to any Person:

(a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of

determination owned, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(b) any partnership, joint venture, limited liability company or similar entity of which

(i) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

For the avoidance of doubt, any entity that is owned at a 50.0% or less level (as described above) shall not be a “Subsidiary” for any purpose under this Certificate of Designations, regardless of whether such entity is consolidated on the Corporation’s or any of its Subsidiaries’ financial statements. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Corporation.

“Successor Person” has the meaning set forth in Section 10(h)(iii).

“Tender/Exchange Offer Valuation Period” has the meaning set forth in Section 10(e)(i)(5).

“Trading Day” means any calendar day on which (a) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded; and (b) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a Business Day.

“Transfer Agent” shall initially mean Equiniti Trust Company, LLC.

“Transfer-Restricted Security” means any Security that constitutes a “restricted security” (as defined in Rule 144); provided, however, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(c) such Security is sold or otherwise transferred to a Person (other than the Corporation or an Affiliate of the Corporation) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(d) such Security is sold or otherwise transferred to a Person (other than the Corporation or an Affiliate of the Corporation) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a “restricted security” (as defined in Rule 144); and

(e) (i) such Security is eligible for resale, by a Person that is not an Affiliate of the Corporation and that has not been an Affiliate of the Corporation during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice; and (ii) the Corporation has received such certificates or other documentation or evidence as the Corporation may reasonably require to determine that the Holder, holder or beneficial owner of such Security is not, and has not been during the immediately preceding three (3) months, an Affiliate of the Corporation.

“Voting Stock” means, with respect to any Person, shares of such Person’s Capital Stock that are at the time generally entitled, without regard to contingencies, to vote in the election of the Board of Directors of such Person.

“Wholly Owned Subsidiary” of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

“Zero Spin-Off” means a spin-off or other Distribution Transaction involving ZeroParks, the Corporation’s hydrogen business.

2. RULES OF CONSTRUCTION. For purposes of this Certificate of Designations:

- (a) “or” is not exclusive;
- (b) “including” means “including without limitation”;
- (c) “will” expresses a command;
- (d) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;
- (e) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;
- (f) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;
- (g) “herein,” “hereof” and other words of similar import refer to this Certificate of Designations as a whole and not to any particular Section or other subdivision of this Certificate of Designations, unless the context requires otherwise;
- (h) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and
- (i) the exhibits, schedules and other attachments to this Certificate of Designations are deemed to form part of this Certificate of Designations.

3. THE CONVERTIBLE PREFERRED STOCK.

(a) **Designation; Par Value.** A series of stock of the Corporation titled the “4.8% Series B Convertible Preferred Stock” (the “Convertible Preferred Stock”) is hereby designated and created out of the authorized and unissued Preferred Shares of the Corporation. The par value of the Convertible Preferred Stock is \$0.01 per share.

(b) **Number of Authorized Shares.** The total authorized number of shares of Convertible Preferred Stock is ninety-six thousand seven hundred forty-six (96,746); provided, however that, by resolution of the Board of Directors, the total number of shares of Convertible Preferred Stock may be increased (but not above the total number of authorized Preferred Shares) or reduced (but not below the number of shares of Convertible Preferred Stock then outstanding).

(c) **Form, Dating and Denominations.**

(i) **Uncertificated Shares.** The Convertible Preferred Stock will be represented in the form of uncertificated shares. The Corporation shall evidence the share(s) of Convertible Preferred Stock in the form of an electronic book entry maintained by the Corporation or the Transfer Agent.

(ii) **Legend; Interpretation.** For purposes of this Certificate of Designations, uncertificated shares will be deemed to include the text set forth in Exhibit A1-A4. Any reference in this Certificate of Designations to the “delivery” of the shares will be deemed to be satisfied upon the registration of the electronic book entry representing such shares of Convertible Preferred Stock in the name of the applicable Holder.

(iii) **No Bearer Certificates; Denominations.** The Convertible Preferred Stock will be issued only in registered form and only in whole numbers of shares.

(d) **Method of Payment; Delay When Payment Date is Not a Business Day.**

(i) **Method of Payment.** The Corporation will pay (or cause the Paying Agent to pay) all cash amounts due on any Convertible Preferred Stock, out of funds legally available therefor, by wire transfer of immediately available funds.

(ii) **Delay of Payment when Payment Date is Not a Business Day.** If the due date for a payment on any Convertible Preferred Stock as provided in this Certificate of Designations is not a Business Day, then, notwithstanding anything to the contrary in this Certificate of Designations, such payment may be made on the immediately following Business Day and no interest, dividend or other amount will accrue or accumulate on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is

authorized or required by law or executive order to close or be closed will be deemed not to be a “Business Day.”

- (e) Transfer Agent, Registrar, Paying Agent and Conversion Agent.
 - (i) Generally. The Corporation designates its principal U.S. executive offices, and any office of the Transfer Agent in the continental United States, as an office or agency where Convertible Preferred Stock may be presented for (1) registration of transfer or for exchange (the “Registrar”); (2) payment (the “Paying Agent”); and (3) conversion (the “Conversion Agent”). At all times when any Convertible Preferred Stock is outstanding, the Corporation will maintain an office in the continental United States constituting the Registrar, Paying Agent and Conversion Agent.
 - (ii) Maintenance of the Register. The Corporation will keep, or cause there to be kept, a record (the “Register”) of the names and addresses of the Holders, the number of shares of Convertible Preferred Stock held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of the Convertible Preferred Stock. Absent manifest error, the entries in the Register will be conclusive and the Corporation and the Transfer Agent may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.
 - (iii) Subsequent Appointments. By notice to each Holder, the Corporation may, at any time, appoint any Person (including any Subsidiary of the Corporation) to act as Registrar, Paying Agent or Conversion Agent.
- (f) Legends.
 - (i) Restricted Stock Legend. Each book-entry evidencing any share of Convertible Preferred Stock that is a Transfer-Restricted Security will be deemed to bear the Restricted Stock Legend.
 - (ii) Acknowledgement and Agreement by the Holders. A Holder’s acceptance of any Convertible Preferred Stock deemed to be bearing any legend required by this Section 3(f) will constitute such Holder’s acknowledgement of, and agreement to comply with, the restrictions set forth in such legend.
 - (iii) Legends on Conversion Shares. Each Conversion Share will bear a legend substantially to the same effect as the Restricted Stock Legend if the Convertible Preferred Stock upon the conversion of which such Conversion Share was issued was (or would have been had it not been converted) a Transfer-Restricted Security at the time such Conversion Share was issued; provided, however, that such Conversion Share need not

bear such a legend if the Corporation determines, in its reasonable discretion, that such Conversion Share need not bear such a legend.

(g) Transfers and Exchanges; Transfer Taxes; Certain Transfer Restrictions.

(i) Provisions Applicable to All Transfers and Exchanges.

(1) Generally. Subject to this Section 3(g), shares of Convertible Preferred Stock may be transferred or exchanged by a Holder to or with one or more other Persons from time to time through the use of an assignment form substantially in the form of the "Assignment Form" set forth in Exhibit A-7 without the prior written consent of the Corporation.

(2) Transfer Restrictions. The shares of Convertible Preferred Stock may be held in aggregate by a maximum of five (5) Holders at any time (provided Ceiba Energy US LP and its Affiliates shall be treated together as one Holder). Any transferee that is not one of the first five (5) Persons to become Holders under the terms of the Convertible Preferred Stock may only transfer all (and not part) of its Convertible Preferred Stock to no more than one other Holder. For the avoidance of doubt, this Section 3(g)(i)(2) shall not restrict the number of transfers amongst these five (5) Holders. A Holder may not transfer shares of Convertible Preferred Stock in an amount less than 5,000 shares (including, for the avoidance of doubt, between Ceiba Energy US LP and any of its Affiliates).

(3) No Services Charge; Transfer Taxes. The Corporation and the Share Agents will not impose any service charge on any Holder for any transfer, exchange or conversion of any Convertible Preferred Stock, but the Corporation, the Transfer Agent, the Registrar and the Conversion Agent may require payment by the applicable Holder of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Convertible Preferred Stock; provided, that (A) any such taxes or charges incurred in connection with the original issuance of the Convertible Preferred Stock that are legally required to be paid by the Corporation shall be paid and borne by the Corporation; and (B) any such taxes or charges incurred in connection with a conversion of the Convertible Preferred Stock pursuant to Section 10 shall be paid and borne as provided in Section 11(c).

(4) No Transfers or Exchanges of Fractional Shares. Notwithstanding anything to the contrary in this Certificate of Designations, all transfers and exchanges of Convertible Preferred Stock must be in an amount representing a whole number of shares of Convertible Preferred Stock, and no fractional share of Convertible Preferred Stock may be transferred or exchanged.

(5) Settlement of Transfers and Exchanges. Subject to Section 3(g)(i)(2), upon satisfaction of the requirements of this Certificate of Designations to effect a transfer or exchange of any Convertible Preferred Stock, the Corporation will cause such transfer or exchange to be registered as soon as reasonably practicable but in no event later than the tenth (10th) Business Day after the date of such satisfaction.

(ii) Transfers of Shares Subject to Redemption, Repurchase or Conversion. Notwithstanding anything to the contrary in this Certificate of Designations, the Corporation, the Transfer Agent and the Registrar will not be required to register the transfer of or exchange any share of Convertible Preferred Stock that has been called for Redemption, subject to a Repurchase or surrendered for conversion.

(h) Status of Retired or Treasury Shares. Upon any share of Convertible Preferred Stock ceasing to be outstanding, such share will be deemed, automatically and without any further action of the Board of Directors, to be retired and to resume the status of an authorized and unissued Preferred Share of the Corporation, and such share cannot thereafter be reissued as Convertible Preferred Stock.

(i) Registered Holders. Only the Holder of any share of Convertible Preferred Stock will have rights under this Certificate of Designations as the owner of such share of Convertible Preferred Stock.

(j) Shares Held by the Corporation or its Subsidiaries. Without limiting the generality of Section 3(k), in determining whether the Holders of the required number of outstanding shares of Convertible Preferred Stock have concurred in any direction, waiver or consent, shares of Convertible Preferred Stock owned by the Corporation or any of its Subsidiaries will be deemed not to be outstanding.

(k) Outstanding Shares.

- (i) Generally. The shares of Convertible Preferred Stock that are outstanding at any time will be deemed to be those shares indicated as outstanding in the Register (absent manifest error), excluding those shares of Convertible Preferred Stock that have theretofore been (1) paid in full upon their conversion or upon their repurchase pursuant to a Repurchase or a Redemption in accordance with this Certificate of Designations; or (2) deemed to cease to be outstanding to the extent provided in, and subject to, clause (ii), (iii), or (iv) of this Section 3(k).
- (ii) Shares to Be Repurchased Pursuant to a Redemption. If, on a Redemption Date, the Paying Agent holds consideration in kind and amount that is sufficient to pay the aggregate Redemption Price due on such date, then (unless there occurs a default in the payment of the Redemption Price) (1) the Convertible Preferred Stock to be redeemed on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Corporation's obligations pursuant to Section 5(d)); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive the Redemption Price as provided in Section 7 (and, if applicable, declared Dividends as provided in Section 5(d)).
- (iii) Shares to Be Repurchased. If, on a Repurchase Date, the Paying Agent holds consideration in kind and amount that is sufficient to pay the

aggregate Repurchase Price due on such date, then (unless there occurs a default in the payment of the Repurchase Price) (1) the Convertible Preferred Stock to be repurchased on such date will be deemed, as of such date, to cease to be outstanding (without limiting the Corporation's obligations pursuant to Section 5(d)); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive the Repurchase Price as provided in Section 8 (and, if applicable, declared Dividends as provided in Section 5(d)).

- (iv) Shares to Be Converted. If any Convertible Preferred Stock is to be converted, then, at the Close of Business on the Optional Conversion Date for such conversion (unless there occurs a default in the delivery of the Conversion Consideration due pursuant to Section 10 upon such conversion): (1) such Convertible Preferred Stock will be deemed to cease to be outstanding (without limiting the Corporation's obligations pursuant to Section 5(d)); and (2) the rights of the Holders of such Convertible Preferred Stock, as such, will terminate with respect to such Convertible Preferred Stock, other than the right to receive such Conversion Consideration as provided in Section 10 (and, if applicable, declared Dividends as provided in Section 5(d)).

(l) Repurchases by the Corporation and its Subsidiaries. Without limiting the generality of Section 3(k), the Corporation and its Subsidiaries may, from time to time, repurchase Convertible Preferred Stock in open market purchases or in negotiated transactions without delivering prior notice to Holders.

- (m) Restrictions on Holders. Unless the prior written consent of the Corporation shall have been obtained, each Holder of any Convertible Preferred Stock shall be (i) a "United States person" as defined in Section 7701(a)(30) of the U.S. Internal Revenue Code of 1986, as amended, and shall demonstrate its status as such from time to time, upon request of the Corporation, by providing to the Corporation a duly completed and executed Internal Revenue Service Form W-9, (ii) a "foreign withholding partnership" that is compliant with the terms of its withholding agreement with the IRS, and shall demonstrate its status as such from time to time, upon request of the Corporation, by providing to the Corporation a duly completed and executed Internal Revenue Service Form IRS Form W-8IMY certifying such status or (iii) a disregarded entity for U.S. federal income tax purposes with a regarded owner for U.S. federal income tax purposes that is described in clause (i) or (ii), and shall demonstrate its status as such from time to time, upon request of the Corporation, by providing to the Corporation, a duly completed Internal Revenue Service Form described in clause (i) or (ii) as applicable.

- 4. RANKING. With respect to payment of dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, all shares of the Convertible Preferred Stock shall rank (a) senior to all

Junior Securities, (b) pari passu with any Parity Securities in issue from time to time and (c) junior to all Senior Securities.

5. DIVIDENDS.

(a) Accumulation and Calculation of Dividends. The Convertible Preferred Stock will accumulate cumulative cash dividends at a rate per annum equal to the Dividend Rate on the Liquidation Preference, regardless of whether or not declared or funds are legally available for their payment (such dividends that accumulate on the Convertible Preferred Stock pursuant to this sentence, "Dividends"). Subject to the other provisions of this Section 5, such Dividends will be payable when, as and if declared by the Board of Directors, quarterly in arrears on each Dividend Payment Date, to the Holders as of the Close of Business on the immediately preceding Dividend Record Date. Dividends on the Convertible Preferred Stock will accumulate daily from, and including, the last date on which Dividends have been paid (or, if no Dividends have been paid, from, and including, the Initial Issue Date) to, but excluding, the next Dividend Payment Date. Accumulated Dividends will be computed on the basis of a 360-day year comprised of twelve 30-day months. No interest, or sum in lieu of interest, will be payable in respect of any Dividend which may be in arrears, and Holders will not be entitled to any dividends in excess of full accumulated Dividends described in this Section 5.

(b) Payment of Dividends. Dividends shall only be payable in cash, out of funds legally available therefor, and only when and if declared by the Board of Directors; provided, that for the avoidance of doubt, the Board of Directors may elect not to declare such Dividends, in which case the Board of Directors may later declare and pay any previously accrued but undeclared dividends, out of funds legally available therefor, at any time thereafter.

(c) Restriction on Common Stock Dividends.

(i) Generally. Unless full cumulative Dividends on the Convertible Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past Dividend Periods:

(1) no dividends or other distributions (other than in shares of Common Stock or in shares of any class or series of Preferred Shares that the Corporation may issue ranking junior to the Convertible Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment upon shares of Common Stock or preferred stock that the Corporation may issue ranking junior to or in parity with the Convertible Preferred Stock (subject to Section 3(c)(ii)) as to dividends or upon liquidation;

(2) no other distribution shall be declared or made upon shares of Common Stock or preferred stock that the Corporation may issue ranking junior to or on a parity with the Convertible Preferred Stock as to dividends or upon liquidation; and

(3) any shares of Common Stock and preferred stock that the Corporation may issue ranking junior to or on a parity with the Convertible Preferred Stock as to dividends or upon liquidation shall not be redeemed, purchased or otherwise acquired for any

consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation, except (x) by conversion into or exchange for shares of, or options, warrants or rights to purchase or subscribe for, other capital stock of the Corporation that it may issue ranking junior to the Convertible Preferred Stock as to dividends and upon liquidation, (y) in the case of the distribution of assets upon liquidation, dissolution or winding up or (z) repurchases of Capital Stock upon the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock or upon the vesting of any profits interests, restricted stock units or similar incentive interests, in each case if such Capital Stock represent all or a portion of the exercise price of such warrants, options or other securities convertible into or exchangeable for Capital Stock as part of a “cashless” exercise upon such exercise or vesting, as applicable.

- (ii) **Partial Payments.** When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Convertible Preferred Stock and the shares of any other class or series of Preferred Shares that the Corporation has issued or may issue ranking on a parity as to dividends with the Convertible Preferred Stock, all dividends declared upon the Convertible Preferred Stock and any other class or series of Preferred Shares that the Corporation has issued or may issue ranking on a parity as to dividends with the Convertible Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Convertible Preferred Stock and such other class or series of Preferred Shares that the Corporation has issued or may issue shall in all cases bear to each other the same ratio that accumulated dividends per share on the Convertible Preferred Stock and accumulated dividends per share on such other class or series of Preferred Shares that the Corporation has issued or may issue (which shall not include any accumulation in respect of undeclared and unpaid dividends for past dividend periods if such preferred stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Convertible Preferred Stock which may be in arrears.

(d) **Treatment of Dividends Upon Redemption and Repurchase.** If the Redemption Date or Repurchase Date (as applicable) of any share of Convertible Preferred Stock is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then the Holder of such share at the Close of Business on such Record Date will be entitled, notwithstanding the related Redemption or Repurchase, as applicable, to receive, on or, at the Corporation’s election, before such Dividend Payment Date, such declared Dividend on such share.

(e) **Dividend Rate Adjustments.** In the event the Corporation fails to pay to the Holders the full cumulative Dividends payable on a Dividend Payment Date, the rate at which Dividends will accumulate daily from, and including, such prior Dividend Payment Date shall immediately increase to the Dividend Rate plus 5.0%, until such date as the Board has declared and the Corporation has paid all previously accrued but unpaid Dividends to the Holders, in which case the Dividends shall immediately resume accumulating daily at the Dividend Rate.

6. RIGHTS UPON LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) Generally. If the Corporation liquidates, dissolves or winds up, whether voluntarily or involuntarily, then, subject to the rights of any of the Corporation's creditors or holders of any outstanding Senior Securities, each share of Convertible Preferred Stock will entitle the Holder thereof to receive payment for the greater of the amounts set forth in clause (i) and (ii) below out of the Corporation's assets or funds legally available for distribution to the Corporation's stockholders, before any such assets or funds are distributed to, or set aside for the benefit of, any Junior Securities:

- (i) the Liquidation Preference, plus any accrued and unpaid dividends in respect of the Convertible Preferred Stock, whether or not declared; and
- (ii) the amount such Holder would have received in respect of the number of shares of Common Stock that would be deliverable upon conversion of such share of Convertible Preferred Stock in connection with an Optional Conversion assuming the Optional Conversion Date of such conversion occurs on the date of such payment.

Upon payment of such amount in full on the outstanding Convertible Preferred Stock, Holders of the Convertible Preferred Stock will have no rights to the Corporation's remaining assets or funds, if any. If such assets or funds are insufficient to fully pay such amount on all outstanding shares of Convertible Preferred Stock and the corresponding amounts payable in respect of all outstanding shares of Parity Securities, if any, then, subject to the rights of any of the Corporation's creditors or holders of any outstanding Senior Securities, such assets or funds will be distributed ratably on the outstanding shares of Convertible Preferred Stock and Parity Securities in proportion to the full respective distributions to which such shares would otherwise be entitled.

(b) Certain Business Combination Transactions Deemed Not to Be a Liquidation. For purposes of Section 6(a), the Corporation's consolidation or combination with, or merger with or into, or the sale, lease or other transfer of all or substantially all of the Corporation's assets (other than a sale, lease or other transfer in connection with the Corporation's liquidation, dissolution or winding up) to, another Person will not, in itself, constitute the Corporation's liquidation, dissolution or winding up, even if, in connection therewith, the Convertible Preferred Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing.

7. REDEMPTION AT THE OPTION OF THE CORPORATION.

(a) *Corporation's Right to Redeem at Specified Times.* The Corporation may redeem, in whole but not in part, the Convertible Preferred Stock, on a Redemption Date, by irrevocable written notice, out of funds legally available therefor, for a purchase price equal to the applicable Redemption Price:

- (i) at any time prior to and including the date that is the three (3) year anniversary of the Series A Issue Date;
- (ii) if the Share Price Condition is not met, at any time after the 30th Trading Day following the three (3) year anniversary of the Series A Issue Date; and
- (iii) if the Share Price Condition is met, then with respect to any shares of Convertible Preferred Stock not subject to a Repurchase Notice, at any time after the related Repurchase Notice Deadline.

(b) *Corporation's Right to Redeem Upon a Change Event.* Upon the occurrence of a Change Event, the Corporation may, by irrevocable, written notice to the Holders, redeem all, but not less than all, of the Convertible Preferred Stock then outstanding, out of funds legally available therefor, for a purchase price equal to the Redemption Price. Each such redemption pursuant to either Section 7(a) or 7(b) shall be referred to as a "Redemption."

(c) *Redemption Price.* The Redemption Price (the "Redemption Price") with respect to a share of Convertible Preferred Stock shall equal the greater of:

- (i) the Liquidation Preference, plus any accrued and unpaid dividends in respect of such share of Convertible Preferred Stock; and
- (ii) solely with respect to shares of Convertible Preferred Stock to be redeemed pursuant to Section 7(a)(i), the cash amount necessary for such Holder to achieve a Return on Investment as of the Redemption Date equal to 1.4,

in each case payable, at the option of the Corporation, in cash ("Cash Settlement"), in shares of Common Stock as described in Section 7(g) ("Stock Settlement"), or in any combination thereof ("Combination Settlement," and each of Cash Settlement, Stock Settlement and Combination Settlement, a "Redemption Settlement Method"); provided, that each Holder can (x) for any Redemption, require Stock Settlement with respect to its shares of Convertible Preferred Stock to be redeemed and (y) for a Redemption pursuant to Section 7(b) prior to the three (3) year anniversary of the Series A Issuance Date, require Cash Settlement with respect to its shares of Convertible Preferred Stock to be redeemed.

(d) *Redemption Date.* The Redemption Date shall be the 45th Calendar Day after the date the Corporation sends the related Redemption Notice.

(e) Redemption Notices. The Corporation shall send a notice of Redemption (the “Redemption Notice”) to Holders:

- (i) in the event of a Redemption pursuant Section 7(a), which shall state:
 - (1) that all shares of Convertible Preferred Stock have been called for redemption;
 - (2) the Redemption Price; and
 - (3) the Redemption Date; and
- (ii) in the event of a Redemption pursuant to Section 7(b), consistent with the requirements set forth in Section 8(e).

(f) Payment of the Redemption Price. The Corporation will cause the Redemption Price for each share of Convertible Preferred Stock subject to Redemption to be delivered to the Holder thereof on or before the applicable Redemption Date.

(g) Redemption Settlement Method.

- (i) *Corporation’s Election.* Provided a Holder has not required Stock Settlement or Cash Settlement, as applicable, pursuant to Section 7(g)(ii), the Corporation may elect the Redemption Settlement Method by providing written notice thereof to each Holder no later than the seventh (7th) Trading Day prior to the Redemption Date (a “Redemption Election Notice”). If the Corporation fails to provide a Redemption Election Notice, the Redemption Settlement Method shall be Cash Settlement.
- (ii) *Majority Holders’ Election.* Pursuant to Section 7(c), each Holder may require Cash Settlement or Stock Settlement with respect to such Holder’s Convertible Preferred Stock for a Redemption by providing written notice thereof to the Paying Agent no later than seven (7) Trading Days prior to the Redemption Date.
- (iii) *Settlement Calculations.* Upon Stock Settlement or Combination Settlement, the number of shares of Common Stock to be delivered shall be equal to the total value otherwise payable pursuant to Section 7(c) minus any portion of the Redemption Price to be paid in cash, divided by the arithmetic average of the Daily VWAPs of the Common Stock for the five (5) consecutive Trading Day period ending on the second Trading Day immediately prior to the Redemption Date or Repurchase Date, as applicable (the “5 Day VWAP”); provided, that the Corporation shall pay cash in lieu of any fractional share of Common Stock to be delivered pursuant to Section 7(c), in an amount calculated pursuant to Section 10(d)(ii).

- (iv) Settlement True-up. If the Corporation elects Stock Settlement or Combination Settlement (but not if a Holder requires Stock Settlement with respect to its shares of Convertible Preferred Stock), within five (5) Business Days following the Redemption Date, any Holder may deliver notice (a "Sale Notice") to the Corporation that such Holder plans (but is not obligated) to sell shares of Common Stock received pursuant to the Redemption, which Sale Notice shall include the number of shares of Common Stock such Holder wishes to sell (the "Subject Shares") and the proposed manner of such sale. If such Holder delivers a Sale Notice to the Corporation, such Holder may sell up to 1/10th of the Subject Shares each Trading Day for a period of ten (10) Trading Days following delivery of the Sale Notice. If the weighted average price per Subject Share for all Subject Shares so sold by such Holder during the ten (10) Trading Day period following delivery of the Sale Notice is less than the 5 Day VWAP, the Corporation agrees to pay cash to such Holder for the Subject Shares sold by such Holder in an amount equal to (A) the 5 Day VWAP, minus (B) the weighted average sale price of such Subject Shares; provided, that the Holder, prior to engaging in such sales, will provide the Corporation the reasonable opportunity (but not obligate it) to direct the timing and manner of such sales in such a way as to allow such Holder to sell the applicable Subject Shares during such 10 Trading Day period.

8. RIGHT OF HOLDERS TO REQUIRE THE CORPORATION TO REPURCHASE CONVERTIBLE PREFERRED STOCK.

(a) Right to Require Repurchase.

- (i) Repurchase upon a Change Event. Subject to the terms of this Section 8, upon the occurrence of a Change Event, each Holder may require the Corporation to repurchase (the “Change Event Repurchase Right”) all, but not less than all, of the shares of Convertible Preferred Stock that are outstanding that it holds as of the related Repurchase Date out of funds legally available therefor, for the Repurchase Price (a “Repurchase Upon Change Event”). For the avoidance of doubt, the Change Event Repurchase Right with respect to a Change Event will be extinguished if a Repurchase Notice has not been delivered prior to the Close of Business on the Repurchase Notice Deadline.
- (ii) Repurchase upon a Share Event. Subject to the terms of this Section 8, upon the occurrence of a Share Event, each Holder may require the Corporation to repurchase (the “Share Event Repurchase Right”) all, but not less than all, of the shares of Convertible Preferred Stock that are outstanding that it holds as of the related Repurchase Date out of funds legally available therefor, for the Repurchase Price (a “Repurchase Upon Share Event”). For the avoidance of doubt, upon a Share Event, the Share Event Repurchase Right will be available only during the thirty (30) calendar day period following delivery to the Holders by the Corporation of a Corporation Event Notice with respect to such Share Event, and will be extinguished thereafter.

(b) Funds Legally Available for Payment of Repurchase Price; Covenant Not to Take Certain Action. If the Corporation does not have sufficient funds legally available to pay the Repurchase Price with respect to all shares of Convertible Preferred Stock that are to be repurchased pursuant to a Repurchase, then the Corporation shall (1) pay the maximum amount of such Repurchase Price that can be paid out of funds legally available for payment, which payment will be made pro rata to each Holder based on the total number of shares of Convertible Preferred Stock of such Holder that were otherwise to be repurchased pursuant to such Repurchase; and (2) purchase any shares of Convertible Preferred Stock not repurchased because of the foregoing limitations at the applicable Repurchase Price as soon as practicable after the Corporation is able to make such purchase out of assets legally available for the purchase of such shares of Convertible Preferred Stock. The inability of the Corporation (or its successor) to make a purchase payment for any reason shall not relieve the Corporation (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. If the Corporation fails to pay the Repurchase Price in full when due in accordance with this Section 8 in respect of some or all of the shares of Convertible Preferred Stock to be repurchased pursuant to the Repurchase Right, the Corporation will pay Dividends on such shares not repurchased or redeemed at the Dividend Rate until such shares are repurchased, payable quarterly in arrears, out of funds legally available, on each Dividend Payment Date, for the period from and including the first Dividend Payment Date (or the Initial Issue Date, as applicable) upon which the

Corporation fails to pay the Repurchase Price in full when due in accordance with this Section 8 through, but not including, the latest of the day upon which the Corporation pays the Repurchase Price in full in accordance with this Section 8. Notwithstanding the foregoing, in the event a Holder exercises a Repurchase Right pursuant to this Section 8 at a time when the Corporation is restricted or prohibited (contractually or otherwise) from repurchasing some or all of the Convertible Preferred Stock subject to the Repurchase Right, the Corporation will use its commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to comply with its obligations under this Section 8. The Corporation will not voluntarily take any action, or voluntarily engage in any transaction, that would result in a Fundamental Change unless the Corporation in good faith believes that it will have sufficient funds legally available to fully pay the maximum aggregate Repurchase Price that would be payable in respect of such Fundamental Change on all shares of Convertible Preferred Stock then outstanding.

(c) Repurchase Date. The Repurchase Date (the "Repurchase Date") for any Event will be the 15th Calendar Day after the Repurchase Notice Deadline.

(d) Repurchase Price. The repurchase price (the "Repurchase Price") with respect to a share of Convertible Preferred Stock shall equal the cash value of the Liquidation Preference, plus any accrued and unpaid dividends in respect of such share of Convertible Preferred Stock, payable at the Corporation's option by Cash Settlement, Stock Settlement as described in Section 8(h) or settlement in any combination of cash and shares of Common Stock (the "Repurchase Settlement Method"); provided, that each Holder may require in the Repurchase Settlement Notice that the Repurchase Settlement Method be Stock Settlement with respect to its shares of Convertible Preferred Stock to be repurchased. The Corporation will cause the Repurchase Price for each share of Convertible Preferred Stock subject to Repurchase to be delivered to the Holder thereof on or before the applicable Repurchase Date.

(e) Event Notice. As promptly as reasonably practicable after the effective date of a Change Event or Share Event (each, an "Event") (but for the avoidance of doubt, in no event prior to the public disclosure of such Event to the extent required in the Corporation's SEC filings), the Corporation shall provide to all Holders a notice (the "Corporation Event Notice") of the occurrence of such effective date or event and that as a result, the conditions precedent to the redemption and repurchase rights of the Corporation and the Holders under Sections 7(b) and 8(a), as applicable, have been satisfied. The Corporation Event Notice must state, as applicable to a Redemption or Repurchase:

- (i) briefly, the events causing such Event;
- (ii) the effective date of such Event;
- (iii) the procedures that a Holder must follow to exercise its rights with respect to the applicable Repurchase Right and the Settlement Method thereof, including the deadline to submit and withdraw its Repurchase Notice;

- (iv) the Repurchase Notice Deadline and the Repurchase Date or the Redemption Date for such Event, as applicable;
 - (v) the Repurchase Price or the Redemption Price, as applicable, including reasonable detail of the calculation thereof;
 - (vi) that if the Repurchase Right or Redemption Right, as applicable, is exercised and the related Repurchase Date is after a Record Date for a declared Dividend on the Convertible Preferred Stock, and on or before the next Dividend Payment Date, such Dividend will not be paid to the Holders;
 - (vii) the name and address of the Transfer Agent, the Conversion Agent and the Paying Agent;
 - (viii) the Conversion Price in effect on the date of such notice and a description and quantification of any adjustments to the Conversion Price that may result from such Event;
 - (ix) that Convertible Preferred Stock may be converted pursuant to Section 10 at any time before the Close of Business on the Business Day immediately before the related Repurchase Date or the Redemption Date, as applicable (or, if the Corporation fails to pay the Repurchase Price or Redemption Price, as applicable, due on such Repurchase Date or Redemption Date in full, at any time until such time as the Corporation pays such Repurchase Price or Redemption Price in full);
 - (x) that shares of Convertible Preferred Stock for which a Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Repurchase Price; and
 - (xi) that shares of Convertible Preferred Stock that are subject to a Repurchase Notice that has been duly tendered may be converted only if such Repurchase Notice is withdrawn in accordance with this Certificate of Designations.
- (f) Procedures to Exercise the Repurchase Right.
- (i) Delivery of Repurchase Notice and Shares of Convertible Preferred Stock to Be Repurchased. To exercise a Repurchase Right, a Holder must deliver to the Paying Agent before the Close of Business on the Repurchase Notice Deadline (or such later time as may be required by law), a duly completed, written Repurchase Notice.
 - (ii) Contents of Repurchase Notice. Each Repurchase Notice must state that the applicable Holder is submitting all of its shares of Convertible

Preferred Stock for Repurchase, and if such Holder desires, to require Stock Settlement.

- (iii) **Withdrawal of Change Event Repurchase Notice.** A Holder that has delivered a Repurchase Notice may withdraw such Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Repurchase Notice Deadline. Such withdrawal notice must state the Holder is withdrawing its previously delivered Repurchase Notice.

(g) **Payment of the Repurchase Price.** If the Paying Agent has received a Repurchase Notice as of the Close of Business on the Repurchase Notice Deadline, and such Repurchase Notice has not been validly withdrawn, subject to Section 8(b), the Corporation will cause the Repurchase Price for each share of Convertible Preferred Stock to be repurchased to be paid to the Holder thereof on or before the Repurchase Date.

(h) **Settlement Method of a Repurchase.**

- (i) **Election of Settlement Method.** Provided a Holder has not required Stock Settlement pursuant to its rights under Section 8(d), the Corporation may elect the Settlement Method by providing written notice thereof to such Holder no later than the seventh (7th) Trading Day prior to the Repurchase Date (a “Repurchase Election Notice”). If the Corporation fails to provide a Repurchase Election Notice in compliance with this Section 8(h)(i), the Repurchase Settlement Method shall be Cash Settlement with respect to such Holder’s Convertible Preferred Stock.
- (ii) **Settlement Calculations.** Upon Stock Settlement or Combination Settlement, the number of shares of Common Stock to be delivered shall be equal to the total value otherwise payable pursuant to Section 8(a) minus any portion of the Repurchase Price to be paid in cash, divided by the 5 Day VWAP; provided, that the Corporation shall pay cash in lieu of any fractional share of Common Stock to be delivered pursuant to Section 8(d), in an amount calculated pursuant to Section 10(d)(ii).
- (iii) **Settlement True-up.** If the Corporation elects Stock Settlement (but not if a Holder requires Stock Settlement with respect to its shares of Convertible Preferred Stock), within five (5) Business Days following the Repurchase Date, such Holder may deliver a Sale Notice to the Corporation that such Holder plans (but is not obligated to) to sell shares of Common Stock received pursuant to the Repurchase, which Sale Notice shall include the number of Subject Shares and the proposed manner of such sale. If such Holder delivers a Sale Notice to the Corporation, such Holder may sell up to 1/10th of the Subject Shares each Trading Day for a period of ten (10) Trading Days following delivery of the Sale Notice. If the weighted average price per Subject Share for all Subject Shares so sold by such Holder during the ten (10) Trading Day period following delivery of the

Sale Notice is less than the 5 Day VWAP, the Corporation agrees to pay cash to such Holder for the Subject Shares sold by such Holder in an amount equal to (A) the 5 Day VWAP, minus (B) the weighted average sale price of such Subject Shares; provided, that the Holder, prior to engaging in such sales, will provide the Corporation the reasonable opportunity (but not obligate it) to direct the timing and manner of such sales in such a way as to allow such Holder to sell the applicable Subject Shares during such 10 Trading Day period.

(i) Third Party May Conduct Repurchase Offer In Lieu of the Corporation.

Notwithstanding anything to the contrary in this Section 8, the Corporation will be deemed to satisfy its obligations under this Section 8 if one or more third parties conduct any Repurchase and related offer to repurchase Convertible Preferred Stock otherwise required by this Section 8 in a manner that would have satisfied the requirements of this Section 8 if conducted directly by the Corporation.

(j) Fundamental Change Agreement. The Corporation shall not enter into any agreement for a transaction constituting a “Fundamental Change” unless (i) such agreement provides for, or does not interfere with or prevent (as applicable), the exercise by the Holders of their Change Event Repurchase Right in a manner that is consistent with, and gives effect to, this Section 8 and (ii) the acquiring or surviving Person in such Fundamental Change represents and covenants, in form and substance reasonably satisfactory to the Corporation, that at the closing of such Fundamental Change such Person shall, and shall have sufficient funds (which may include, without limitation, cash and cash equivalents on the Corporation’s balance sheet, the proceeds of any debt or equity financing, available lines of credit or uncalled capital commitments) to, consummate such Fundamental Change and make the payment of the Repurchase Price in respect of shares of Convertible Preferred Stock then outstanding.

9. VOTING RIGHTS. The Convertible Preferred Stock will have no voting, consent or waiver rights except as set forth in this Section 9 or as otherwise provided in the Certificate of Incorporation or required by the General Corporation Law of the State of Delaware.

(a) Voting, Consent and Waiver Rights with Respect to Specified Matters.

(i) Generally. Subject to the other provisions of this Section 9(a), each following event will require, and cannot be effected without, the affirmative vote, consent or waiver of the Majority Holders:

(1) any amendment, modification or repeal of any provision of the Certificate of Incorporation (including this Certificate of Designations) or Bylaws that adversely affects the rights, preferences or voting powers of the Convertible Preferred Stock (other than an amendment, modification or repeal permitted by Section 9(a)(ii)); and

(2) any exchange, reclassification or cancellation of all or part of the Convertible Preferred Stock.

provided, however, that each of the following will be deemed not to adversely affect the special rights, preferences or voting powers of the Convertible Preferred Stock and will not require any vote, consent or waiver pursuant to Section 9(a)(i)(1):

(A) notwithstanding the provisions of Section 242(b)(2) of the DGCL, any increase in the number of the authorized but unissued shares of the Corporation's undesignated Preferred Shares;

(B) any increase in the number of authorized shares of Convertible Preferred Stock as necessary with respect to issuances of shares of Convertible Preferred Stock in respect of Convertible Preferred Stock that was issued on the Initial Issue Date;

(C) notwithstanding the provisions of Section 242(b)(2) of the DGCL, the creation and issuance, or increase in the authorized or issued number, of any shares of any class or series of stock; and

(D) the application of Section 10(h), including the execution and delivery of any supplemental instruments pursuant to Section 10(h)(ii) solely to give effect to such provision.

- (ii) Certain Amendments Permitted Without Consent. Notwithstanding anything to the contrary in Section 9(a)(i)(1), the Corporation may amend, modify or repeal any of the terms of the Convertible Preferred Stock without the vote, consent or waiver of any Holder to amend or correct this Certificate of Designations to cure any ambiguity or correct any omission, defect or inconsistency.

(b) Right to Vote with Holders of Common Stock on an As-Converted Basis. Subject to the other provisions of, and without limiting the other voting rights provided in this Section 9, the Holders will have the right to vote together as a single class with the holders of the Common Stock on each matter submitted for a vote, consent or waiver by the holders of the Common Stock, and, for these purposes, (i) the Convertible Preferred Stock of each Holder will entitle such Holder to be treated as if such Holder were the holder of record, as of the record or other relevant date for such matter, of a number of shares of Common Stock equal to the number of shares of Common Stock that would be deliverable (determined in accordance with Section 10(d), including Section 10(d)(ii)) upon conversion of such Convertible Preferred Stock assuming such Convertible Preferred Stock were converted with an Optional Conversion Date occurring on such record or other relevant date; and (ii) the Holders will be entitled to notice of all stockholder meetings or proposed actions by written consent in accordance with the Certificate of Incorporation, the Bylaws of the Corporation, and the General Corporation Law of the State of Delaware as if the Holders were holders of Common Stock. Notwithstanding the foregoing, the aggregate voting power of the Convertible Preferred Stock when voting with the holders of the Common Stock shall be limited to the extent necessary to comply with the NASDAQ Listing Standard Rules, and any resulting limitation on the voting rights of the Convertible Preferred Stock shall apply pro rata among the Holders thereof.

- (c) Procedures for Voting, Consents and Waivers.
- (i) Rules and Procedures Governing Votes, Consents or Waivers. If any vote, consent or waiver of the Holders will be held or solicited, including at an annual meeting or a special meeting of stockholders, then (1) the Board of Directors will adopt customary rules and procedures at its discretion to govern such vote or consent, subject to the other provisions of this Section 9; and (2) such rules and procedures may include fixing a record date to determine the Holders that are entitled to vote or provide consent, as applicable, rules governing the solicitation and use of proxies or written consents and customary procedures for the nomination and designation, by Holders, of directors for election; provided, however, that with respect to any rights of the Holders pursuant to Section 9(b), such rules and procedures will be the same rules and procedures that apply to holders of the Common Stock with respect to the applicable matter referred to in Section 9(b).
 - (ii) Voting Power of the Convertible Preferred Stock. Each share of Convertible Preferred Stock outstanding as of the applicable record date will be entitled to one vote on each matter on which the Holders of the Convertible Preferred Stock are entitled to vote separately as a class and not together with the holders of any other class or series of stock.
 - (iii) Written Consent in Lieu of Stockholder Meeting. Notwithstanding anything to the contrary otherwise set forth in the Certificate of Incorporation, the Bylaws or otherwise, an affirmative vote, consent or waiver of the Holders pursuant to Section 9(a) may be given or obtained in writing without a meeting.

10. CONVERSION.

(a) Generally. Subject to the provisions of this Section 10, the Convertible Preferred Stock may be converted pursuant to an Optional Conversion at any time by the Holders into shares of Common Stock pursuant to Section 10(d).

(b) Conversion at the Option of the Holders.

- (i) Conversion Right; When Shares May Be Submitted for Optional Conversion. Each Holder will have the right to submit its shares of Convertible Preferred Stock, in whole or in minimum increments of 5,000 shares, pursuant to an Optional Conversion at any time; provided, however, that notwithstanding anything to the contrary in this Certificate of Designations,

(1) if a Repurchase Notice is validly delivered pursuant to Section 8(f)(i) with respect to any share of Convertible Preferred Stock, then such share may not be submitted for Optional Conversion except to the extent (A) such share is not subject to such

notice; (B) such notice is withdrawn in accordance with Section 8(f)(iii) or (C) the Corporation fails to pay the Repurchase Price for such share in accordance with this Certificate of Designations;

(2) no Convertible Preferred Stock may be submitted for Optional Conversion to the extent limited by Section 10(g); and

(3) shares of Convertible Preferred Stock that are called for Redemption may not be submitted for Optional Conversion after the Close of Business on the Business Day immediately before the related Redemption Date (or, if the Corporation fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Corporation pays such Redemption Price in full).

(ii) Conversions of Fractional Shares Not Permitted. Notwithstanding anything to the contrary in this Certificate of Designations, in no event will any Holder be entitled to convert a number of shares of Convertible Preferred Stock that is not a whole number.

(c) Conversion Procedures.

(i) Requirements for Holders to Exercise Optional Conversion Right.

(1) Generally. To convert any share of Convertible Preferred Stock evidenced by a Certificate pursuant to an Optional Conversion, the Holder of such share must (x) complete, sign (by manual, facsimile or electronic signature) and deliver to the Conversion Agent a notice thereof (the "Optional Conversion Notice") (a form of which is set forth in Exhibit A-5), at which time such Optional Conversion will become irrevocable; (y) furnish any endorsements and transfer documents that the Corporation or the Conversion Agent may reasonably require; and (z) if applicable, pay any documentary or other taxes that are required to be paid by the Corporation as a result of a Holder requesting that shares be registered in a name other than such Holders' name as described in Section 11(b).

(2) Optional Conversion Permitted Only During Business Hours. Convertible Preferred Stock will be deemed to be surrendered for Optional Conversion only after the Open of Business and before the Close of Business on a day that is a Business Day.

(ii) Treatment of Accumulated Dividends upon Conversion.

(1) No Adjustments for Accumulated Dividends. The Conversion Price will not be adjusted to account for any accumulated and unpaid Dividends on any Convertible Preferred Stock being converted.

(2) Conversions Between A Record Date and a Dividend Payment Date. If the Optional Conversion Date of any share of Convertible Preferred Stock to be converted is after a Record Date for a declared Dividend on the Convertible Preferred Stock and on or before the next Dividend Payment Date, then Holders will not be entitled to such Dividend, notwithstanding anything herein to the contrary, and if such Dividend is paid, the Holder must

return it to the Corporation as a condition to the receipt of shares of Common Stock upon conversion.

(iii) When Holders Become Stockholders of Record of the Shares of Common Stock Deliverable Upon Conversion. The Person in whose name any share of Common Stock is deliverable upon conversion of any Convertible Preferred Stock will be deemed to become the holder of record of such share as of the Close of Business on the Optional Conversion Date for such conversion.

(d) Settlement Upon Conversion.

(i) Generally. Subject to Section 10(d)(ii), Section 10(g) and Section 14(b), the consideration due upon settlement of the conversion of each share of Convertible Preferred Stock will consist of a number of shares of Common Stock equal to the quotient obtained by dividing (I) the Liquidation Preference, plus any accrued and unpaid dividends in respect of the Convertible Preferred Stock, whether or not declared, by (II) the Conversion Price, in each case, as of immediately before the Close of Business on such Optional Conversion Date.

(ii) Payment of Cash in Lieu of any Fractional Share of Common Stock. Subject to Section 14(b), in lieu of delivering any fractional share of Common Stock otherwise due upon conversion of any Convertible Preferred Stock, the Corporation will, to the extent it is legally able to do so and permitted under the terms of its indebtedness for borrowed money, pay cash based on the Last Reported Sale Price per share of Common Stock on the Optional Conversion Date for such conversion (or, if such Optional Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(iii) Delivery of Conversion Consideration. Except as provided in Sections 10(e)(i)(3)(B), 10(e)(i)(5) and 10(h), the Corporation will pay or deliver, as applicable, the Conversion Consideration due upon conversion of any Convertible Preferred Stock on or before the tenth (10th) Business Day immediately after the Optional Conversion Date for such conversion.

(e) Conversion Price Adjustments.

(i) Events Requiring an Adjustment to the Conversion Price. The Conversion Price will be adjusted from time to time as follows:

(1) Stock Dividends, Splits and Combinations. If the Corporation issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Corporation effects a stock split or a stock combination of the Common Stock or similar event (in each case, excluding an issuance solely pursuant to a Common Stock Change Event, as to which Section 10(h) will apply), then the Conversion Price will be adjusted based on the following formula:

$$CP_i = CP_o \times \frac{OS_o}{OS_i}$$

where:

- CP₀ = the Conversion Price in effect immediately before the Close of Business on the Record Date for such dividend, distribution or other similar event, or immediately before the Close of Business on the effective date of such stock split, stock combination or other similar event, as applicable;
- CP₁ = the Conversion Price in effect immediately after the Close of Business on such Record Date or effective date, as applicable;
- OS₀ = the number of shares of Common Stock outstanding immediately before the Close of Business on such Record Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split, stock combination or other similar event; and
- OS₁ = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split, stock combination or other similar event.

If any dividend, distribution, stock split, stock combination or other similar event of the type described in this Section 10(e)(i)(1) is declared or announced, but not so paid or made, then the Conversion Price will be readjusted, effective as of the date the Corporation determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Price that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(2) Rights, Options and Warrants. If the Corporation distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which Section 10(e)(i)(3)(A) and Section 10(e)(iii) will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the Record Date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS + Y}{OS + X}$$

where:

- CP₀ = the Conversion Price in effect immediately before the Close of Business on such Record Date;
- CP₁ = the Conversion Price in effect immediately after the Close of Business on such Record Date;
- OS = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination;

- Y = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced; and
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants.

To the extent such rights, options or warrants are not so distributed, the Conversion Price will be readjusted to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Price will be readjusted to the Conversion Price that would then be in effect had the decrease to the Conversion Price for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants.

For purposes of this Section 10(e)(i)(2), in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Corporation receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Corporation.

(3) Distribution Transactions and Other Distributed Property.

(A) Distributions Other than Distribution Transactions. If the Corporation distributes shares of its Capital Stock, evidences of the Corporation's indebtedness or other assets or property of the Corporation, or rights, options or warrants to acquire the Corporation's Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding:

dividends, distributions, rights, options or warrants
for which an adjustment to the Conversion Price is required pursuant to Section
10(e)(i)(1) or 10(e)(i)(2);

dividends or distributions paid exclusively in cash
for which an adjustment to the Conversion Price is required pursuant to Section
10(e)(i)(4);

rights issued or otherwise distributed pursuant to a
stockholder rights plan, except to the extent provided in Section 10(e)(iii);

Distribution Transactions for which an adjustment to the Conversion Price is required pursuant to Section 10(e)(i)(3)(B);

a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which Section 10(e)(i)(2) will apply; and

a distribution solely pursuant to a Common Stock Change Event, as to which Section 10(h) will apply, then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP - FMV}{SP}$$

where:

- CP₀ = the Conversion Price in effect immediately before the Close of Business on the Record Date for such distribution;
- CP₁ = the Conversion Price in effect immediately after the Close of Business on such Record Date;
- SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the Ex-Dividend Date for such distribution; and
- FMV = the fair market value (as determined in good faith by the board of the Corporation or a committee appointed thereby), as of such Record Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, however, that, if FMV is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Price, each Holder will receive, for each share of Convertible Preferred Stock held by such Holder on such Record Date, at the same time and on the same terms as holders of Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received in such distribution if such Holder had owned, on such Record Date, a number of shares of Common Stock equal to the number of shares of Common Stock that would be deliverable (determined in accordance with Section 10(d) but without regard to Section 10(d)(ii), Section 10(d)(iii) or 10(g)) in respect of one (1) share of Convertible Preferred Stock that is converted with an Optional Conversion Date occurring on such Record Date (subject to the same arrangements, if any, in such distribution not to issue or deliver a fractional portion of any Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants, but with such arrangement applying separately to each Holder and computed based on the total number of shares of Convertible Preferred Stock held by such Holder on such Record Date); provided, further, that in the event the Zero Spin-Off is consummated and would otherwise constitute a Distribution Transaction, no adjustment to the Conversion Price shall be made.

To the extent such distribution is not so paid or made, the Conversion Price will be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(B) **Distribution Transactions.** If the Corporation engages in a Distribution Transaction in which it distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Corporation to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which Section 10(h) will apply; or (y) a tender offer or exchange offer for shares of Common Stock, as to which Section 10(e)(i)(2) will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange, then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP}{FMV + SP}$$

where:

- CP₀ = the Conversion Price in effect immediately before the Close of Business on the Record Date for such Distribution Transaction;
- CP₁ = the Conversion Price in effect immediately after the Close of Business on such Record Date;
- SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Distribution Transaction Valuation Period (as defined below); and
- FMV = the product of (x) the average of the Last Reported Sale Prices per share or equity interests distributed in such Distribution Transaction over the ten (10) consecutive Trading Day period (the “Distribution Transaction Valuation Period”) beginning on, and including, the Ex-Dividend Date for such Distribution Transaction (such average to be determined as if references to Common Stock in the definitions of “Last Reported Sale Price,” “Trading Day” and “Market Disruption Event” were instead references to such Capital Stock or equity interests); and (y) the number of shares or equity interests distributed per share of Common Stock in such Distribution Transaction;

provided, however, that in the event the Zero Spin-Off is consummated and would otherwise constitute a Distribution Transaction, no adjustment to the Conversion Price shall be made.

The adjustment to the Conversion Price pursuant to this Section 10(e)(i)(3)(B) will be calculated as of the Close of Business on the last Trading Day of the Distribution Transaction Valuation Period that will be given effect immediately after the Close of Business of the Record Date for the Distribution Transaction, with retroactive effect. If the Optional Conversion Date for any share of Convertible Preferred Stock to be converted occurs during the Distribution Transaction Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designations, the Corporation will, if necessary, delay the settlement of such conversion.

To the extent any dividend or distribution of the type described in Section 10(e)(i)(3)(B) is declared but not made or paid, the Conversion Price will be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(4) **Cash Dividends or Distributions.** If any cash dividend or distribution is made to all or substantially all holders of Common Stock that, together with all prior dividends or distributions made to all or substantially all holders of the Common Stock during the calendar quarter in which such dividend or distribution is made, exceeds \$0.10 per share (the “Dividend Threshold”), then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP - D}{SP}$$

where:

- CP₀ = the Conversion Price in effect immediately before the Close of Business on the Record Date for such dividend or distribution;
- CP₁ = the Conversion Price in effect immediately after the Close of Business on such Record Date;
- SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before the Ex-Dividend Date for such dividend or distribution; and
- D = the cash amount distributed per share of Common Stock in such dividend or distribution to all or substantially all holders of the Common Stock (the “Applicable Dividend or Distribution”) in excess of the Dividend Threshold; provided, that for purposes of this definition “D,” the Dividend Threshold with respect to any date shall be reduced by the aggregate per share cash dividends or distributions that were previously made to all or substantially all holders of the Common Stock during the Dividend Period for the Applicable Dividend or Distribution; and provided further, that if the result of such reduction is a negative number, the Dividend Threshold shall be deemed to be zero for such dividend period.

provided, however, that, if D is equal to or greater than SP, then, in lieu of the foregoing adjustment to the Conversion Price, each Holder will receive, for each share of Convertible Preferred Stock held by such Holder on such Record Date, at the same time and on the same terms as holders of Common Stock, the amount of cash that such Holder would have received in such dividend or distribution if such Holder had owned, on such Record Date, a number of shares of Common Stock equal to the number of shares of Common Stock that would be deliverable (determined in accordance with Section 10(d) but without regard to Section 10(d)(ii), 10(d)(iii) or 10(g)) in respect of one (1) share of Convertible Preferred Stock that is converted with an Optional Conversion Date occurring on such Record Date. To the extent such dividend or distribution is declared but not made or paid, the Conversion Price will be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

The Dividend Threshold is subject to adjustment in a manner directly proportional to adjustments to the Conversion Price; provided, that no adjustment shall be made to the Dividend Threshold for any adjustment to the Conversion Price under this Section 10(e)(i)(4).

(5) Tender Offers or Exchange Offers. If the Corporation or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Corporation) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the “Expiration Date”) on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP \times OS_0}{AC + (SP \times OS_1)}$$

where:

- CP₀ = the Conversion Price in effect immediately before the time (the “Expiration Time”) such tender or exchange offer expires;
- CP₁ = the Conversion Price in effect immediately after the Expiration Time;
- SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the “Tender/Exchange Offer Valuation Period”) beginning on, and including, the Trading Day immediately after the Expiration Date;
- OS₀ = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- AC = the aggregate value (determined as of the Expiration Time by the Corporation) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer; and
- OS₁ = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

provided, however, that the Conversion Price will in no event be adjusted up pursuant to this Section 10(e)(i)(5), except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Price pursuant to this Section 10(e)(i)(5) will be calculated as of the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period but will be given effect immediately after the Expiration Time, with retroactive effect. If the Optional Conversion Date for any share of Convertible Preferred Stock to be converted occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designations, the Corporation will, if necessary, delay the settlement of such conversion.

To the extent such tender or exchange offer is announced but not consummated (including as a result of being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Price will be readjusted to the Conversion Price that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

- (ii) No Adjustments in Certain Cases. Without limiting the operation of Section 5(b)(i) and 10(d)(i), the Corporation will not be required to adjust the Conversion Price except pursuant to Section 10(e)(i).
- (iii) Stockholder Rights Plans. If any shares of Common Stock are to be issued upon conversion of any Convertible Preferred Stock and, at the time of such conversion, the Corporation has in effect any stockholder rights plan, then the Holder of such Convertible Preferred Stock will be entitled to receive, in addition to, and concurrently with the delivery of, the consideration otherwise due upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Price will be adjusted pursuant to Section 10(e)(i)(3)(A) on account of such separation as if, at the time of such separation, the Corporation had made a distribution of the type referred to in such Section 10(e)(i)(3)(A) to all holders of Common Stock, subject to readjustment pursuant to Section 10(e)(i)(3)(A) if such rights expire, terminate or are redeemed.
- (iv) Threshold for Adjustments. Notwithstanding any other provision of this Section 10(e)(i), the Corporation shall not be required to make any adjustment of the Conversion Price unless such adjustment would require an increase or decrease of at least one percent (1%) in the Conversion Price. Any lesser adjustment shall be carried forward and shall be made no later than the time of, and together with, the next subsequent adjustment which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least one percent (1%) in the Conversion Price.
- (v) Determination of the Number of Outstanding Shares of Common Stock. For purposes of Section 10(e)(i), the number of shares of Common Stock outstanding at any time will exclude shares of Common Stock held in the Corporation's treasury (unless the Corporation pays any dividend or makes any distributions on shares of Common Stock held in its treasury).
- (vi) Calculations. All calculations with respect to the Conversion Price and adjustments thereto will be made to the nearest 1/100th of a cent (with 5/1,000ths rounded upward).

- (vii) Notice of Conversion Price Adjustments. Upon the effectiveness of any adjustment to the Conversion Price pursuant to Section 10(e)(i), the Corporation will, as soon as reasonably practicable, send notice to the Holders containing (1) a brief description of the transaction or other event on account of which such adjustment was made; (2) the Conversion Price in effect immediately after such adjustment; and (3) the effective time of such adjustment.
- (f) Voluntary Conversion Price Decreases.
 - (i) Generally. To the extent permitted by law and applicable stock exchange rules, the Corporation, from time to time, may (but is not required to) decrease the Conversion Price by any amount if (1) the Board of Directors determines that such decrease is in the Corporation's best interest or that such decrease is advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (2) such decrease is in effect for a period of at least twenty (20) Business Days; and (3) such decrease is irrevocable during such period; provided, however, that any such decrease that would be reasonably expected to result in any income tax imposed on holders of Convertible Preferred Stock shall require the affirmative vote or consent of the Majority Holders.
 - (ii) Notice of Voluntary Decrease. If the Board of Directors determines to decrease the Conversion Price pursuant to Section 10(f)(i), then, no later than the first Business Day of the related twenty (20) Business Day period referred to in Section 10(f)(i), the Corporation will send notice to each Holder, the Transfer Agent and the Conversion Agent of such decrease to the Conversion Price, the amount thereof and the period during which such decrease will be in effect.
- (g) Restriction on Conversions.
 - (i) Equity Treatment Limitation.

(1) Generally. Notwithstanding anything to the contrary in this Certificate of Designations, the Corporation will in no event be required to deliver any shares of Common Stock in settlement of the conversion of any Convertible Preferred Stock to the extent, but only to the extent, the Corporation does not then have sufficient authorized and unissued shares of Common Stock that are not reserved for other purposes (the limitation set forth in this sentence, the "Equity Treatment Limitation," and any shares of Common Stock that would otherwise be deliverable in excess of the number of such authorized and unissued shares, the "Deficit Shares"). If any Deficit Shares are withheld pursuant to the Equity Treatment Limitation and, at any time thereafter, some or all of such Deficit Shares could be delivered without violating the Equity Treatment Limitation, then (A) the Corporation will deliver such Deficit Shares to the extent, but only to the extent, such delivery is permitted by the Equity

Treatment Limitation; and (B) the provisions of this sentence will continue to apply until there are no remaining Deficit Shares.

(2) Share Reserve Provisions. On the Initial Issue Date, the Number of Reserved Shares is not less than the Initial Share Reserve Requirement. The Corporation shall at all times reserve and keep available a Number of Reserved Shares to be no less than the Continuing Share Reserve Requirement at any time when any Convertible Preferred Stock is outstanding (including, if applicable, by seeking the approval of its stockholders to amend the Certificate of Incorporation to increase the number of authorized shares of Common Stock).

(h) Effect of Common Stock Change Event.

(i) Generally. If there occurs any:

(1) recapitalization, reclassification or change of the Common Stock, other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value or (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities;

(2) consolidation, merger, combination or binding or statutory share exchange involving the Corporation;

(3) sale, lease or other transfer of all or substantially all of the assets of the Corporation and its Subsidiaries, taken as a whole, to any Person; or

(4) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a “Common Stock Change Event,” and such other securities, cash or property, the “Reference Property,” and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a “Reference Property Unit”), then, notwithstanding anything to the contrary in this Certificate of Designations,

(A) from and after the effective time of such Common Stock Change Event, (I) the consideration due upon conversion of any Convertible Preferred Stock will be determined in the same manner as if each reference to any number of shares of Common Stock in Section 7, Section 8, Section 10 or in Section 11, or in any related definitions, were instead a reference to the same number of Reference Property Units; and (II) for purposes of the definitions of “Fundamental Change,” the terms “Common Stock” and “common equity” will be deemed to mean the common equity (including depository receipts representing common equity), if any, forming part of such Reference Property; and

(B) if such Reference Property Unit consists entirely of cash, then the Corporation will pay the cash due in respect of all conversions whose Optional

Conversion Date occurs on or after the effective date of such Common Stock Change Event no later than the tenth (10th) Business Day after the relevant Optional Conversion Date.

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Corporation will notify the Holders of such weighted average as soon as practicable after such determination is made.

- (ii) Compliance Covenant. The Corporation will not become a party to any Common Stock Change Event unless its terms are consistent with this Section 10(h).
- (iii) Execution of Supplemental Instruments. On or before the date the Common Stock Change Event becomes effective, the Corporation and, if applicable, the resulting, surviving or transferee Person (if not the Corporation) of such Common Stock Change Event (the “Successor Person”) will execute and deliver such supplemental instruments, if any, as the Corporation reasonably determines are necessary or desirable to (1) provide for subsequent adjustments to the Conversion Price pursuant to Section 10(e)(i) in a manner consistent with this Section 10(h); and (2) give effect to such other provisions, if any, as the Corporation reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to Section 10(h)(i). If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such supplemental instrument(s), if any, and such supplemental instrument(s) will contain such additional provisions, if any, that the Corporation reasonably determines are appropriate to preserve the economic interests of Holders.
- (iv) Notice of Common Stock Change Event. The Corporation will provide notice of each Common Stock Change Event to Holders as promptly as possible after the effective date of the Common Stock Change Event.

11. CERTAIN PROVISIONS RELATING TO THE ISSUANCE OF COMMON STOCK.

(a) Equitable Adjustments to Prices. Whenever this Certificate of Designations requires the Corporation to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate an adjustment to the Conversion Price), the Corporation will make appropriate adjustments, if any, to those calculations to account for any adjustment to the Conversion Price pursuant to Section 10(e)(i) that becomes effective, or any event requiring such an adjustment to the Conversion Price where the Ex-Dividend Date, effective date or Expiration Date, as applicable, of such event occurs, at any time during such period.

(b) Status of Shares of Common Stock. Each share of Common Stock delivered upon conversion of the Convertible Preferred Stock of any Holder will be a newly issued share and will be duly authorized and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of such Holder or the Person to whom such share of Common Stock will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Corporation will cause each such share of Common Stock, when so delivered, to be admitted for listing on such exchange or quotation on such system.

(c) Taxes Upon Issuance of Common Stock. The Corporation will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon conversion of the Convertible Preferred Stock of any Holder, except any tax or duty that is due because such Holder requests those shares to be registered in a name other than such Holder's name.

12. TAXES.

(a) The Corporation shall use commercially reasonable efforts to cooperate with any reasonable request to structure any Redemption or conversion, in whole or in part, of the Convertible Preferred Stock as a sale or exchange (in the case of a Redemption) or a tax-free transaction (in the case of a conversion) of such Convertible Preferred Stock (and not as a distribution) for U.S. federal income tax purposes, to the extent permitted by applicable law (as reasonably determined by the Corporation).

(b) The Corporation shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Convertible Preferred Stock (that are legally required to be paid by the Corporation) or shares of Common Stock or other securities issued on account of Convertible Preferred Stock pursuant hereto or certificates evidencing such shares or securities. However, in the case of conversion of Convertible Preferred Stock, the Corporation shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Convertible Preferred Stock, shares of Common Stock or other securities to a beneficial owner other than the beneficial owner of the Convertible Preferred Stock immediately prior to such conversion, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid or is not payable.

(c) All payments, dividends and distributions on, or in redemption of, or upon conversion of, the Convertible Preferred Stock shall be subject to withholding and backup withholding of tax to the extent required by law, and amounts withheld, if any, shall be paid over to the applicable governmental authority to the extent required by law and shall be treated as received by the applicable Holder of such Convertible Preferred Stock in respect of which such amounts were withheld. The Corporation shall have the right to take measures necessary to obtain cash to satisfy the Corporation's withholding requirements with respect to any non-cash, deemed or constructive payment, dividend or distribution to the Holders, including by retaining,

selling or liquidating property of the applicable Holders held by the Corporation in its custody or over which it has control, including any stock deliverable upon conversion of any Convertible Preferred Stock or any cash payable to the applicable Holder following such payment, dividend or distribution. Each Holder shall indemnify the Corporation and its Affiliates for, and hold harmless the Corporation and its Affiliates from and against, any and all withholding tax, including penalties and interest, payable by or assessed against the Corporation or any of its Affiliates in respect of the shares of Convertible Preferred Stock held by such Holder.

(d) The Corporation agrees not to report any income relating to the yield described in Section 5(a) as includible in income by a Holder (or its beneficial owners), as a dividend or otherwise, prior to the time such amount is declared and paid in cash or property, unless otherwise required by applicable law (as reasonably determined by the Corporation), a change in applicable law after the date hereof that is binding on taxpayers, a change after the date hereof in the terms of the Convertible Preferred Stock, or a binding determination with respect to a tax audit, contest or similar proceeding.

(e) The Corporation shall use commercially reasonable efforts to provide any information reasonably requested by a Holder necessary to enable the Holder to comply with its U.S. federal income tax reporting obligations, including, but not limited to, the final determination as well as any reasonably-requested estimates or projections of the amount of the Corporation's current earnings and profits and accumulated earnings and profits (as determined for U.S. federal income tax purposes) in any taxable year where such determination is relevant to determining the amount (if any) of any distribution received by a Holder from the Corporation that is properly treated as a dividend for U.S. federal income tax purposes.

(f) The Corporation shall (i) provide to a Holder, within fifteen (15) days of such Holder's written request, a certification that the shares of Convertible Preferred Stock do not constitute a "United States real property interest," in accordance with U.S. Treasury Regulations Section 1.897-2(h)(1), or a written notice of the Corporation's legal inability to provide such certification, and (ii) in connection with the provision of any certification pursuant to the preceding clause (i), comply with the notice provisions set forth in U.S. Treasury Regulations Section 1.897-2(h). In the event the Corporation becomes aware of any facts or circumstances that could reasonably be expected to cause it to become a "United States real property holding corporation," the Corporation shall use commercially reasonable efforts to promptly notify the Holder thereof.

13. **TERM.** Except as expressly provided in this Certificate of Designations, the shares of Convertible Preferred Stock shall not be redeemable or otherwise mature and the term of the Convertible Preferred Stock shall be perpetual.

14. **CALCULATIONS.**

(a) **Responsibility; Schedule of Calculations.** Except as otherwise provided in this Certificate of Designations, the Corporation will be responsible for making all calculations called for under this Certificate of Designations or the Convertible Preferred Stock, including determinations of the Conversion Price, the Last Reported Sale Prices and accumulated Dividends, whether or not declared, on the Convertible Preferred Stock. The Corporation will

make all calculations in good faith. The Corporation will provide a schedule of such calculations to any Holder upon written request. If the Majority Holders dispute any calculations called for under this Certificate of Designations or the Convertible Preferred Stock, if such dispute is not promptly resolved by discussion between the Majority Holders and the Corporation, the Corporation shall submit the disputed issues to an independent outside accountant (reasonably acceptable to the Majority Holders) within fifteen (15) Business Days of receipt of notice of such dispute. The accountant, at the Corporation's expense, shall promptly audit the calculations and notify the holder of the results no later than fifteen (15) Business Days from the date it receives the disputed calculations. The accountant's calculation shall be deemed conclusive, absent manifest error.

(b) **Calculations Aggregated for Each Holder.** The composition of the Conversion Consideration due upon conversion of the Convertible Preferred Stock of any Holder will be computed based on the total number of shares of Convertible Preferred Stock of such Holder being converted with the same Optional Conversion Date. For these purposes, any cash amounts due to such Holder in respect thereof will be rounded to the nearest cent.

15. **NOTICES.** The Corporation will send all notices or communications to Holders pursuant to this Certificate of Designations in writing and delivered personally, by facsimile or e-mail (with confirmation of receipt requested from the recipient, in the case of e-mail), or sent by a nationally recognized overnight courier service guaranteeing next day delivery, to the Holders' respective addresses shown on the Register. Unless otherwise specified herein, all notices and communications hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service.
16. **FACTS ASCERTAINABLE.** When the terms of this Certificate of Designations refers to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Secretary of the Corporation shall maintain a copy of such agreement or document at the principal executive offices of the Corporation and a copy thereof shall be provided free of charge to any Holder who makes a request therefor. The Secretary of the Corporation shall also maintain a written record of the Initial Issue Date, the number of shares of Convertible Preferred Stock issued to a Holder and the date of each such issuance, and shall furnish such written record free of charge to any Holder who makes a request therefor.
17. **SEVERABILITY.** If any term of the Convertible Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.
18. **NO OTHER RIGHTS.** The Convertible Preferred Stock will have no rights, preferences or voting powers except as provided in this Certificate of Designations or the Certificate of Incorporation or as required by applicable law.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be duly executed as of the date first written above.

New Fortress Energy Inc.

By: /s/ Christopher S. Guinta

Name: Christopher S. Guinta

Title: Chief Financial Officer

[Signature Page to Certificate of Designations]

FORM OF CONVERTIBLE PREFERRED STOCK CERTIFICATE

[Insert Restricted Stock Legend, if applicable]

New Fortress Energy Inc.

4.8% Series B Convertible Preferred Stock

Certificate No. []

New Fortress Energy Inc., a Delaware corporation (the “Corporation”), certifies that [] is the registered owner of [] shares of the Corporation’s 4.8% Series B Convertible Preferred Stock (the “Convertible Preferred Stock”) evidenced by this certificate (this “Certificate”). The special rights, preferences and voting powers of the Convertible Preferred Stock are set forth in the Certificate of Designations of the Corporation establishing the Convertible Preferred Stock (the “Certificate of Designations”). Capitalized terms used in this Certificate without definition have the respective meanings ascribed to them in the Certificate of Designations.

The shares of Convertible Preferred Stock are subject to restrictions on transfer set forth in the Certificate of Designations. The Corporation will give to the holder of Convertible Preferred Stock a copy of the Certificate of Designations then in effect without charge, promptly after receipt of a written request to the following address:

New Fortress Energy Inc.
111 W. 19th Street, 8th Floor
New York, New York, 10011
Attention: General Counsel

Additional terms of this Certificate are set forth on the other side of this Certificate.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, New Fortress Energy Inc. has caused this instrument to be duly executed as of the date set forth below.

NEW FORTRESS ENERGY INC.

Date: _____

By: _____
Name:
Title:

TRANSFER AGENT'S COUNTERSIGNATURE

Equiniti Trust Company, LLC, as Transfer Agent, certifies that this Certificate evidences shares of Convertible Preferred Stock referred to in the within-mentioned Certificate of Designations.

Date: _____

By: _____
Authorized Signatory

New Fortress Energy Inc.

4.8% Series B Convertible Preferred Stock

This Certificate evidences duly authorized, issued and outstanding shares of Convertible Preferred Stock. Notwithstanding anything to the contrary in this Certificate, to the extent that any provision of this Certificate conflicts with the provisions of the Certificate of Designations or the Certificate of Incorporation, the provisions of the Certificate of Designations or the Certificate of Incorporation, as applicable, will control.

1. **Countersignature.** This Certificate will not be valid until countersigned by the Transfer Agent.
2. **Abbreviations.** Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

* * *

To request a copy of the Certificate of Designations, which the Corporation will provide to any Holder at no charge, please send a written request to the following address:

New Fortress Energy Inc.
111 W. 19th Street, 8th Floor
New York, New York, 10011
Attention: General Counsel

OPTIONAL CONVERSION NOTICE

New Fortress Energy Inc.

4.8% Series B Convertible Preferred Stock

Subject to the terms of the Certificate of Designations, by executing and delivering this Optional Conversion Notice, the undersigned Holder of the Convertible Preferred Stock identified below directs the Corporation to convert all of its outstanding shares of Convertible Preferred Stock.

Date: _____

(Legal Name of Holder)

Name:

Title:

REPURCHASE NOTICE

New Fortress Energy Inc.

4.8% Series B Convertible Preferred Stock

Subject to the terms of the Certificate of Designations, by executing and delivering this Repurchase Notice, the undersigned Holder of the Convertible Preferred Stock identified below direct the Corporation to redeem all of the shares of its Convertible Preferred Stock.

[The Holder hereby requires the Settlement Method be Stock Settlement].

Date: _____

(Legal Name of Holder)

Name:

Title:

ASSIGNMENT FORM

New Fortress Energy Inc.

4.8% Series B Convertible Preferred Stock

Subject to the terms of the Certificate of Designations, the undersigned Holder of the within Convertible Preferred Stock assigns to:

Name: _____

Address: _____

Social security
or tax
identification
number _____

its Convertible Preferred Stock and all rights thereunder and irrevocably appoints:

as agent to transfer the Convertible Preferred Stock on the books of the Corporation. The agent may substitute another to act for him/her.

Date: _____
_____ (Legal Name of Holder)

Name:
Title:

FORM OF RESTRICTED STOCK LEGEND

THE OFFER AND SALE OF THIS SECURITY AND THE SHARES OF COMMON STOCK DELIVERABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY AND SUCH SHARES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT; OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

REGISTRATION RIGHTS AGREEMENT

by and among

New Fortress Energy Inc.

and

Ceiba Energy US LP

Dated as of October 1, 2024

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THIS REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), is made and entered into as of October 1, 2024, by and between New Fortress Energy Inc., a Delaware corporation (the “**Company**”), and Ceiba Energy US LP, a Delaware limited partnership (the “**Investor**” and, together with the Company, the “**Parties**” and, each, a “**Party**”).

WHEREAS, the Parties have entered into an Exchange Agreement, dated as of September 23, 2024 (the “**Exchange Agreement**”), pursuant to which the Investor has agreed to acquire from the Company, and the Company has agreed to issue to the Investor, 96,746 shares of the Company’s Preferred Stock (as defined herein), 10,000 shares of which will initially be deposited into an escrow account;

WHEREAS, the Preferred Stock is convertible into shares of the Company’s Class A common stock, par value \$0.01 per share (the “**Common Stock**”);

WHEREAS, as a condition to the closing of the transactions contemplated by the Exchange Agreement, the Company and the Investor must enter into this Agreement to grant the Investor certain registration rights with respect to Common Stock issuable upon conversion of the Preferred Stock; and

WHEREAS, the Company and the Investor desire to define the registration rights for the Investor on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. Certain Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

“**Agreement**” means this Registration Rights Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to this Registration Rights Agreement as the same may be in effect at the time such reference becomes operative.

“**Business Day**” means a day other than a Saturday, Sunday or day on which commercial banks located in New York, New York, USA are authorized or required to be closed for business.

“**Certificate of Designations**” means the Certificate of Designations, dated as of October 1, 2024, setting forth the terms of the Preferred Stock.

“**Company**” has the meaning set forth in the introductory paragraph.

“**Conversion Shares**” means the shares of Common Stock issued or issuable upon conversion of any shares of Preferred Stock at the then-prevailing Conversion Price (as defined in the Certificate of Designations).

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

“**Form S-3**” means a registration statement on Form S-3 under the Securities Act or such successor forms thereto permitting registration of securities under the Securities Act.

“**Governmental Entity**” means all United States and other governmental or regulatory authorities.

“**Investor**” or “**Investors**” has the meaning set forth in the introductory paragraph; *provided*, that if any Permitted Transferee succeeds to the rights and obligations of such Investor or Investors hereunder in accordance with Section 8 hereof, “Investor” or “Investors” shall also mean such Permitted Transferees.

“**Permitted Transferee**” means any transferee of the Preferred Stock in accordance with Section 8 hereof.

“**Person**” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, incorporated organization, association, corporation, institution, public benefit corporation, Governmental Entity or any other entity.

“**Preferred Stock**” means (a) the Company’s Series B Convertible Preferred Stock, par value \$0.01 per share, with a liquidation preference of \$1,000 per share issued pursuant to the Exchange Agreement and (b) any securities into which or for which the securities described in (a) above may be converted, exchanged or reclassified pursuant to a plan of recapitalization, reorganization, merger, sale of assets or otherwise pursuant to the Certificate of Designations, other than Conversion Shares.

“**Prospectus**” means the prospectus or prospectuses (whether preliminary or final) included in a Registration Statement and relating to the terms of the sale of any portion of Registrable Shares, as amended or supplemented and including all material incorporated by reference in such prospectus or prospectuses.

“**Registrable Shares**” means, at any time, with respect to a particular Investor (i) the Conversion Shares, (ii) shares of Common Stock issued by the Company to the Investors pursuant to a redemption or repurchase of the Preferred Stock as permitted under the Certificate of Designations (the “**Redemption Shares**”) and (iii) any securities issued by the Company after the date hereof in respect of the Conversion Shares or Redemption Shares by way of a share dividend or share split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization; *provided, however*, that such securities will irrevocably cease to constitute Registrable Shares upon the earliest to occur of: (a) the date on which such securities are disposed of pursuant to a Registration Statement under the Securities Act or pursuant to Rule 144 (or any successor provision); (b) the date on which such securities may be distributed to the public pursuant to Rule 144 (or any successor provision) under the Securities Act without limitation thereunder on volume or manner of sale; (c) the date on which such securities have been transferred in violation of Section 7 hereof or to a Person that does not become an Investor pursuant to Section 8 hereof; and (d) the date on which such securities cease to be outstanding (or any combination of clauses (a)-(d)). It is understood and agreed that, once a security of the kind described in clause (i) or (ii) above becomes a security of the kind described in the proviso above,

such security shall cease to be a Registrable Share for all purposes of this Agreement and the Company's obligations regarding Registrable Share hereunder shall cease to apply with respect to such security.

"Registration Expenses" has the meaning set forth in Section 5(a).

"Registration Statement" means a registration statement or registration statements of the Company filed under the Securities Act covering the Registrable Shares.

"SEC" means the Securities and Exchange Commission or any successor agency.

"Securities Act" means the Securities Act of 1933, as amended.

"Suspension Period" has the meaning set forth in Section 3.

"Termination Date" means, with respect to an Investor, the first date on which the Investor no longer owns any Registrable Shares or is no longer an "Investor."

In addition to the above definitions, unless the context requires otherwise:

(i) any reference to any statute, regulation, rule or form as of any time shall mean such statute, regulation, rule or form as amended or modified and shall also include any successor statute, regulation, rule or form from time to time;

(ii) "including" shall be construed as inclusive without limitation, in each case notwithstanding the absence of any express statement to such effect, or the presence of such express statement in some contexts and not in others;

(iii) references to "Section" are references to Sections of this Agreement;

(iv) words such as "herein," "hereof," "hereinafter" and "hereby" when used in this Agreement refer to this Agreement as a whole;

(v) references to "business day" mean any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the State of New York generally are authorized or required by law or other governmental action to close; and

(vi) the symbol "\$" means U.S. dollars.

Section 2. Shelf Registration.

(a) Initial Registrable Shares. Subject to the provisions hereof, the Company shall, as promptly as reasonably practicable, but no later than the third Business Day following the issuance of the Preferred Stock, (i) file (if permitted to do so under the Securities Act and the rules and regulations thereunder) a Registration Statement on Form S-1 or Form S-3 (if the Company is then eligible to use a Form S-3 shelf registration), or an amendment or supplement to an existing registration statement on Form S-3 (the "**Initial Registration Statement**") for a sale of Registrable

Shares pursuant to Rule 415 promulgated under the Securities Act or otherwise (the “**Initial Shelf Registration**”) in an amount at least equal to the number of Conversion Shares initially issuable upon conversion of the outstanding Preferred Stock held by the Investors and (ii) if necessary, cause such Initial Registration Statement to become effective as soon as practical thereafter. If permitted under the Securities Act, the Initial Registration Statement shall be one that is automatically effective upon filing.

(b) Sufficient Registration of Shares. In the event the number of shares of Common Stock registered for resale under the Initial Registration Statement, together with any subsequent Registration Statement filed pursuant to this Section 2(b), as applicable, is insufficient to cover all of the Registrable Shares required to be covered by a Registration Statement pursuant to this Agreement, the Company shall amend the Initial Registration Statement, or file a new Registration Statement on Form S-1 or Form S-3 (if the Company is then eligible to use a Form S-3 shelf registration), so as to cover the full amount of Registrable Shares required to be covered by a Registration Statement as of the trading day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than three (3) Business Days after reasonable request from the Investor. The Company shall cause such amendment and/or new Registration Statement to become effective as soon as reasonably practicable following the filing thereof. For purposes of the foregoing provision, the number of shares of Common Stock available under the Initial Registration Statement, together with any subsequent Registration Statement filed pursuant to this Section 2(b), as applicable, shall be deemed “insufficient to cover all of the Registrable Shares” if at any time the number of shares of Common Stock available for resale under the Registration Statement is (i) less the number of shares of Common Stock held by the Investors pursuant to a conversion of Preferred Stock and into which the Preferred Stock held by the Investors is then convertible or (ii) less the number of Redemption Shares.

(c) Effective Period of Shelf Registration. The Company shall, subject to the other applicable provisions of this Agreement, use commercially reasonable efforts to cause any Registration Statement to be continuously effective and usable until such time as there are no longer any Registrable Shares. Notwithstanding the foregoing, the Company shall not be obligated to keep any such Registration Statement effective, or to permit Registrable Shares to be registered, offered or sold thereunder, at any time on or after the Termination Date.

Section 3. Suspension Periods. The Company may delay the filing or effectiveness of any Registration Statement or require the Investors to suspend any sales of Registrable Shares pursuant thereto, but only if the Company’s board of directors determines in its reasonable discretion, based on written advice of counsel (x) that proceeding with such sales would require the Company to disclose material information that would not otherwise be required to be disclosed at that time and that the disclosure of such information at that time would be materially harmful to the Company, or (y) that the registration or sales to be delayed would, if not delayed, materially adversely affect the Company and its subsidiaries taken as a whole or materially interfere with, or jeopardize the success of, any pending or proposed material transaction, including, any material debt or equity financing, any material acquisition or disposition, or any recapitalization or reorganization of the Company. Any period during which the Company has delayed a filing, an effective date or a sale pursuant to this Section 3 is herein called a “**Suspension Period**.” The Company shall provide prompt written notice to the Investors of the

commencement and termination of any Suspension Period (and any withdrawal of a registration statement pursuant to this Section 3); provided however such notice shall not include any material non-public information. The Investors shall keep the existence of each Suspension Period confidential and refrain from making offers and sales of Registrable Shares (and direct any other Persons making such offers and sales to refrain from doing so) during each Suspension Period. In no event (i) may the Company deliver notice of a Suspension Period to the Investors more than two times in any calendar year and (ii) shall a Suspension Period or Suspension Periods be in effect for an aggregate of 90 days or more in any calendar year.

Section 4. Registration Procedures.

(a) In connection with a Registration Statement provided for in Sections 2(a) and 2(b), the Company shall use commercially reasonable efforts to effect, as soon as practical as provided herein, the registration and the sale of such Registrable Shares in accordance with the intended methods of disposition thereof, and, pursuant thereto, the Company shall, as soon as practical as provided herein:

(i) subject to the other provisions of this Agreement, use commercially reasonable efforts to prepare and file with the SEC such Registration Statement with respect to such Registrable Shares and cause such Registration Statement to become effective (unless it is automatically effective upon filing);

(ii) use commercially reasonable efforts to prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to comply with the applicable requirements of the Securities Act and to keep such Registration Statement effective for the relevant period required hereunder, but no longer than is necessary to complete the distribution of the Registrable Shares covered by such Registration Statement, and to comply with the applicable requirements of the Securities Act with respect to the disposition of all the Registrable Shares covered by such Registration Statement during such period in accordance with the intended methods of disposition set forth in such Registration Statement;

(iii) use commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of such Registration Statement, or the lifting of any suspension of the qualification or exemption from qualification of any Registrable Shares for sale in any jurisdiction in the United States;

(iv) notify such Investors at any time when a Prospectus relating thereto would be required under the Securities Act to be delivered of the occurrence of any event as a result of which the Prospectus included in such Registration Statement contains an untrue statement of a material fact or omits a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and, at the request of an Investor, the Company shall use commercially reasonable efforts to prepare, as soon as practical, a supplement or amendment to such Prospectus so that, as thereafter delivered to any prospective purchasers of such Registrable Shares, such Prospectus shall not contain an untrue statement 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;

(v) use commercially reasonable efforts to cause all such Registrable Shares to be listed on each primary securities exchange (if any) on which securities of the same class issued by the Company are then listed;

(vi) provide a transfer agent and registrar for all such Registrable Shares not later than the effective date of such Registration Statement and, a reasonable time before any proposed sale of Registrable Shares pursuant to such Registration Statement or Rule 144, provide the transfer agent if reasonably required by the transfer agent, any authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Shares without legend upon sale by the holder of such shares of Registrable Shares under such Registration Statement or Rule 144, subject to the provisions of Section 7 hereof; and

(vii) promptly notify the Investors:

(1) when such Registration Statement, any pre-effective amendment, the Prospectus or any Prospectus supplement or any post-effective amendment to such Registration Statement has been filed and, with respect to such Registration Statement or any post-effective amendment, when the same has become effective;

(2) of any request by the SEC for amendments or supplements to such Registration Statement or the Prospectus or for any additional information regarding such Investor;

(3) of the notification to the Company by the SEC of its initiation of any proceeding with respect to the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement; and

(4) of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Shares for sale under the applicable securities laws or blue sky laws of any jurisdiction.

(b) No Registration Statement (including any amendments thereto) shall contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading, and no Prospectus (including any supplements thereto) shall contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, in each case, except for any untrue statement or alleged untrue statement of a material fact or omission or alleged omission of a material fact made in reliance on and in conformity with written information furnished to the Company by or on behalf of the Investors specifically for use therein.

(c) At all times after the Company has filed a Registration Statement with the SEC and until the Termination Date, pursuant to the requirements of the Securities Act, the

Company shall use commercially reasonable efforts to file all reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder, all to the extent required to enable the Investors to be eligible to sell Registrable Shares (if any) pursuant to Rule 144 under the Securities Act.

(d) The Company may require the Investors as to which any registration is being effected to furnish to the Company information regarding such Investor as the Company may from time to time reasonably request in connection with such registration.

(e) Each Investor agrees by having its shares of Common Stock treated as Registrable Shares hereunder that, upon being advised in writing by the Company of the occurrence of an event pursuant to Section 4(a)(iv), the Investor will immediately discontinue (and direct any other Persons making offers and sales of Registrable Shares to immediately discontinue) offers and sales of Registrable Shares pursuant to any Registration Statement until it is advised in writing by the Company that the use of the Prospectus may be resumed and is furnished with a supplemented or amended Prospectus as contemplated by Section 4(a)(iv), and, if so directed by the Company, the Investor will deliver to the Company all copies (at the Company's expense), other than permanent file copies then in the Investor's possession, of the Prospectus covering such Registrable Shares current at the time of receipt of such notice.

(f) The Company may prepare and deliver a free writing prospectus (as such term is defined in Rule 405 under the Securities Act) in lieu of any supplement to a Prospectus, and references herein to any "supplement" to a Prospectus shall include any such free writing prospectus. No Investor may use a free writing prospectus to offer or sell any such shares without the Company's prior written consent.

(g) It is understood and agreed that any failure of the Company to file a Registration Statement or any amendment or supplement thereto or to cause any such document to become or remain effective or usable within or for any particular period of time as provided in Section 2 or 4, or otherwise in this Agreement, due to reasons that are not reasonably within its control, or due to any refusal of the SEC to permit such Registration Statement or Prospectus to become or remain effective or to be used because of unresolved SEC comments thereon (or on any documents incorporated therein by reference) despite the Company's good faith and commercially reasonable efforts to resolve those comments, shall not be a breach of this Agreement.

(h) It is further understood and agreed that the Company shall not have any obligations under this Section 4 at any time on or after the Termination Date.

(i) Notwithstanding anything to the contrary in this Agreement, the Company shall not be required to file any Registration Statement or include Registrable Shares in any Registration Statement unless it has received from the applicable Investor, at least three business days prior to the anticipated filing date of such Registration Statement, reasonably requested information required to be included in the Registration Statement and to be provided by such Investor for inclusion therein.

Section 5. Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement, including all registration and filing fees, fees

and expenses of compliance with securities or blue sky laws, listing application fees, transfer agent's and registrar's fees and fees and disbursements of counsel for the Company and all independent certified public accountants and other Persons retained by the Company (all such expenses being herein called "**Registration Expenses**"), shall be borne by the Company. The Investor shall bear the cost of all commissions associated with any sale of Registrable Shares and shall pay its own costs and expenses, including all fees and expenses of any counsel (and any other advisers) representing the Investor and any stock transfer taxes.

Section 6. Indemnification.

(a) The Company shall indemnify, to the fullest extent permitted by law, each Investor (to the extent a seller under a Registration Statement) against all losses, claims, damages, liabilities, judgments, costs (including reasonable and documented costs of investigation) and expenses (including reasonable and documented attorneys' fees) arising out of or based upon any untrue or alleged untrue statement of a material fact contained in that Registration Statement or Prospectus or any amendment thereof or supplement thereto or arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of a Prospectus, in the light of the circumstances under which they were made), except insofar as the same are made in reliance and in conformity with information furnished in writing to the Company by the Investors.

(b) In connection with any Registration Statement, the Investors shall furnish to the Company in writing such information as the Company reasonably requests for use in connection with such Registration Statement or Prospectus, or amendment or supplement thereto, and shall indemnify, severally and not jointly, to the fullest extent permitted by law, the Company, its officers and directors and each Person who controls the Company (within the meaning of the Securities Act) against all losses, claims, damages, liabilities, judgments, costs (including reasonable and documented costs of investigation) and expenses (including reasonable and documented attorneys' fees) arising out of or based upon any untrue or alleged untrue statement of material fact contained in the Registration Statement or Prospectus, or any amendment or supplement thereto, or arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of a Prospectus, in the light of the circumstances under which they were made), but only to the extent that the same are made in reliance and in conformity with information furnished in writing to the Company by or on behalf of the Investors expressly for use therein.

(c) Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying Person of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying Person to assume the defense of such claim with counsel reasonably satisfactory to the indemnified Person. Failure so to notify the indemnifying Person shall not relieve it from any liability that it may have to an indemnified Person except to the extent that the indemnifying Person is materially and adversely prejudiced thereby. The indemnifying Person shall not be subject to any liability for any settlement made by the indemnified Person without its consent. An indemnifying Person who is entitled to, and elects to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel (in addition to one local counsel in each jurisdiction) for all Persons indemnified (hereunder or otherwise) by such indemnifying Person with respect to such claim (and all other

claims arising out of the same circumstances), unless in the reasonable judgment of any indemnified Person there may be one or more legal or equitable defenses available to such indemnified Person which are in addition to or may conflict with those available to another indemnified Person with respect to such claim, in which case such maximum number of counsel for all indemnified Persons shall be two rather than one). If an indemnifying Person is entitled to, and elects to, assume the defense of a claim, the indemnified Person shall continue to be entitled to participate in the defense thereof, with counsel of its own choice, but, except as set forth above, the indemnifying Person shall not be obligated to reimburse the indemnified Person for the costs thereof. The indemnifying Person shall not consent to the entry of any judgment or enter into or agree to any settlement relating to a claim or action for which any indemnified Person would be entitled to indemnification by any indemnified Person hereunder unless such judgment or settlement imposes no ongoing obligations on any such indemnified Person and includes as an unconditional term the giving, by all relevant claimants and plaintiffs to such indemnified Person, a release, satisfactory in form and substance to such indemnified Person, from all liabilities in respect of such claim or action for which such indemnified Person would be entitled to such indemnification. The indemnifying Person shall not be liable hereunder for any amount paid or payable or incurred pursuant to or in connection with any judgment entered or settlement effected with the consent of an indemnified Person unless the indemnifying Person has also consented to such judgment or settlement.

(d) The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified Person or any officer, director or controlling Person of such indemnified Person and shall survive the transfer of securities and the applicable Termination Date but only with respect to offers and sales of Registrable Shares made before the applicable Termination Date or during the period following the applicable Termination Date referred to in Section 4(g).

(e) If the indemnification provided for in or pursuant to this Section 6 is due in accordance with the terms hereof, but is held by a court to be unavailable or unenforceable in respect of any losses, claims, damages, liabilities or expenses referred to herein, then each applicable indemnifying Person, in lieu of indemnifying such indemnified Person, shall contribute to the amount paid or payable by such indemnified Person as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying Person on the one hand and of the indemnified Person on the other in connection with the statements or omissions which result in such losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of the indemnifying Person on the one hand and of the indemnified Person on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying Person or by the indemnified Person, and by such Person's relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. In no event shall the liability of the indemnifying Person be greater in amount than the amount for which such indemnifying Person would have been obligated to pay by way of indemnification if the indemnification provided for under Section 6(a) or 6(b) hereof had been available under the circumstances.

Section 7. Securities Act Restrictions. The Registrable Shares are restricted securities under the Securities Act and may not be offered or sold except pursuant to an effective registration statement or an available exemption from registration under the Securities Act. Accordingly, the Investors shall not, directly or through others, offer or sell any Registrable Shares except pursuant to a Registration Statement as contemplated herein or pursuant to Rule 144 or another exemption from registration under the Securities Act, if available. Prior to any transfer of Registrable Shares other than pursuant to an effective registration statement, the Investor shall notify the Company of such transfer and the Company may require the Investor to provide, prior to such transfer, such evidence that the transfer will comply with the Securities Act (including written representations or an opinion of counsel) as the Company may reasonably request. The Company may impose stop-transfer instructions with respect to any Registrable Shares that are to be transferred in contravention of this Agreement. The legend on any Registrable Shares or shares of Preferred Stock held by an Investor shall be removed if (i) a registration statement covering the resale of such shares is effective under the Securities Act and the applicable holder of such shares delivers to the Company a representation letter agreeing that it has sold such shares pursuant to such effective registration statement or (ii) if such shares may be sold free of the applicable restrictions identified in Rule 144(b), including paragraph (c)(1) of Rule 144; *provided*, that, the holder of such shares has provided all necessary documentation and evidence as may reasonably be required by the Company to confirm that the legend may be removed under applicable securities law. The Company shall cooperate with the applicable holder of such shares to effect removal of the legend on such shares as soon as reasonably practicable after delivery of notice from such holder that the conditions to removal are satisfied (together with any documentation required to be delivered by such holder pursuant to the immediately preceding sentence). The Company shall bear all direct costs and expenses associated with the removal of a legend.

Section 8. Transfers of Rights. If an Investor transfers any rights to a Permitted Transferee in accordance with the provisions of the Certificate of Designations, such Permitted Transferee shall, together with all other such Permitted Transferees and the Investors, also have the rights of the Investors under this Agreement, but only if the Permitted Transferee signs and delivers to the Company a written acknowledgment (in form and substance reasonably satisfactory to the Company) that it has joined with the Investors and the other Permitted Transferees as a party to this Agreement and has assumed the rights and obligations of the Investors hereunder with respect to the rights transferred to it by an Investor. Each such transfer shall be effective when (but only when) the Permitted Transferee has signed and delivered the written acknowledgment to the Company. Upon any such effective transfer, the Permitted Transferee shall automatically have the rights so transferred, and the applicable Investor's obligations under this Agreement, and the rights not so transferred, shall continue. Notwithstanding any other provision of this Agreement, no Person who acquires securities transferred in violation of this Agreement, or who acquires securities that are not or upon acquisition cease to be Registrable Shares, shall have any rights under this Agreement with

respect to such securities, and such securities shall not have the benefits afforded hereunder to Registrable Shares.

Section 9. Miscellaneous.

(a) Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a nationally recognized next day courier service, in each case with a copy sent concurrently by e-mail. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice. Notices and other communications hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites). Notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause of notification that such notice or communication is available and identifying the website address therefor.

If to the Investor:

Ceiba Energy US LP
c/o Denham Capital Management LP
185 Dartmouth Street, 7th Floor
Boston, MA 02116
Attn: Tony Fiore; Fernando Planchart
Email: [***]

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

Ceiba Energy Management LLC
7676 Woodway Drive, Suite 325
Houston, TX 77063
Attn: Legal Department
Email: [***]

and

Latham & Watkins LLP
811 Main Street, Suite 3700
Houston, Texas 77002
Attention: James Garrett; John Greer
Email: [***]

and

Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados
Praia do Flamengo 200 11º andar
Rio de Janeiro – RJ, 22210-901
Attn: Felipe Rodrigues Caldas Feres
Email: [***]

If to Buyer:

New Fortress Energy Inc.
111 W. 19th Street, 8th Floor
New York, New York 10011
Attn: Cameron D. MacDougall
Email: [***]

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

Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001
Attn: Michael J. Schwartz
Email: [***]

(b) No Waivers. No failure or delay by any party in exercising any right, power or privilege 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, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

(c) Assignment. Neither this Agreement nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of the other parties, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except an assignment, in the case of a merger or consolidation where such party is not the surviving entity, or a sale of substantially all of its assets, to the entity which is the survivor of such merger or consolidation or the purchaser in such sale.

(d) No Third-Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the Company and the Investor, any benefits, rights, or remedies (except as specified in Section 6 hereof).

(e) **Governing Law; Submission to Jurisdiction; Waiver of Jury Trial, Etc.** **This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the Parties hereto agrees (a) to submit to the exclusive personal jurisdiction of the State or Federal courts in the Borough of Manhattan, The City of New York, (b) that**

exclusive jurisdiction and venue shall lie in the State or Federal courts in the State of New York, and (c) that notice may be served upon such party at the address and in the manner set forth for such party in Section 9(a). To the extent permitted by applicable law, each of the Parties hereto hereby unconditionally waives trial by jury in any legal action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(f) Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts (including by e-mail or facsimile) and by different parties hereto in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument. This Agreement shall become effective when each party hereto shall have received counterparts hereof signed by all of the other parties hereto.

(g) Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes and replaces all other prior agreements, written or oral, among the Parties hereto with respect to the subject matter hereof.

(h) Captions. The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any provision of this Agreement.

(i) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

(j) Amendments. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given without the prior written consent of the Company and the Investor.

[Execution Page Follows]

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

NEW FORTRESS ENERGY INC.

By: /s/ Christopher S. Guinta

Name: Christopher S. Guinta

Title: Chief Financial Officer

CEIBA ENERGY US LP

By: /s/ Emilio A. Vicens

Name: Emilio A. Vicens

Title: Chief Executive Officer

[Signature Page to Registration Rights Agreement]

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October 2, 2024

New Fortress Energy Inc.
111 W. 19th Street, 8th Floor
New York, New York 10011

Re: New Fortress Energy Inc. – Offering of Common Stock

Ladies and Gentlemen:

We have acted as special United States counsel to New Fortress Energy Inc., a Delaware corporation (the “Company”), in connection with the public offering by the Company of 46,349,942 shares (the “Shares”) of the Company’s Class A common stock, par value \$0.01 per share (the “Common Stock”).

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933 (the “Securities Act”).

In rendering the opinion stated herein, we have examined and relied upon the following:

(a) the registration statement on Form S-3 (File No. 333-277611) of the Company relating to the Common Stock and other securities of the Company filed on March 1, 2024 with the Securities and Exchange Commission (the “Commission”) under the Securities Act allowing for delayed offerings pursuant to Rule 415 of the General Rules and Regulations under the Securities Act (the “Rules and Regulations”), including the information deemed to be a

part of the registration statement pursuant to Rule 430B of the Rules and Regulations (such registration statement being hereinafter referred to as the "Registration Statement");

(b) the prospectus, dated March 1, 2024 (the "Base Prospectus"), which forms a part of and is included in the Registration Statement;

(c) the prospectus supplement, dated October 2, 2024 (together with the Base Prospectus, the "Prospectus"), relating to the offering of the Shares, in the form filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations;

(d) an executed copy of the Underwriting Agreement (the "Underwriting Agreement"), dated October 1, 2024, between the Company and Morgan Stanley & Co. LLC, as representative of the several underwriters named therein (the "Underwriters"), relating to the sale by the Company to the Underwriters of the Shares;

(e) an executed copy of a certificate of Cameron D. MacDougall, Secretary of the Company, dated the date hereof (the "Secretary's Certificate");

(f) a copy of the Company's Amended and Restated Certificate of Incorporation, as amended and in effect as of the date hereof, certified by the Secretary of State of the State of Delaware as of September 30, 2024, and certified pursuant to the Secretary's Certificate (the "Charter");

(g) a copy of the Company's Amended and Restated By-laws, as amended and in effect as of the date hereof and certified pursuant to the Secretary's Certificate (the "Bylaws"); and

(h) copies of certain resolutions of the Board of Directors of the Company, adopted on September 30, 2024, and copies of certain resolutions of the Pricing Committee of the Board of Directors of the Company, adopted on October 1, 2024, in each case certified pursuant to the Company Secretary's Certificate.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinions stated below.

In our examination, we have assumed the genuineness of all signatures, including electronic signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photocopied copies, and the authenticity of the originals of such copies. As to any facts relevant to the opinions stated herein that we did not independently establish or verify, we have relied upon statements and

representations of officers and other representatives of the Company and others and of public officials, including the facts and conclusions set forth in the Secretary's Certificate and the factual representations and warranties set forth in the Underwriting Agreement. We have also assumed that the issuance of the Shares does not violate or conflict with any agreement or instrument binding on the Company (except that we do not make this assumption with respect to the Charter and the Bylaws and those agreements or instruments expressed to be governed by the laws of the State of New York which are listed in Part II of the Registration Statement).

We do not express any opinion with respect to the laws of any jurisdiction other than the General Corporation Law of the State of Delaware (the "DGCL").

Based upon the foregoing and subject to the qualifications and assumptions stated herein, we are of the opinion that the Shares have been duly authorized by all requisite corporate action on the part of the Company under the DGCL and when issued and sold in accordance with the Underwriting Agreement, will be validly issued, fully paid and nonassessable, provided that the consideration therefor is not less than \$0.01 per Share.

In addition, in rendering the foregoing opinion we have assumed that the Company's authorized capital stock is as set forth in the Charter and we have relied solely on the certified copy thereof issued by the Secretary of State of the State of Delaware and have not made any other inquiries or investigations.

We hereby consent to the reference to our firm under the heading "Legal Matters" in the Preliminary Prospectus and the Prospectus. We also hereby consent to the filing of this opinion with the Commission as an exhibit to the Company's Current Report on Form 8-K being filed on the date hereof and incorporated by reference into the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP

MJS
