

THIS IS EXHIBIT " 26 "
referred to in the Affidavit of
J. David Rushford
Sworn before me this 8th
day of March 2016
CS

CHRIS SIMARD
Barrister and Solicitor

INTERCREDITOR AGREEMENT

among

**The Combined Lenders, any Combined Issuing Banks,
any Secured Swap Providers, Bank Product Providers and the other Agents party thereto,**

JPMORGAN CHASE BANK, N.A.,

as Global Administrative Agent,

and

JPMORGAN CHASE BANK, N.A., TORONTO BRANCH,

as Canadian Administrative Agent

Dated as of December 22, 2011

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "Agreement"), dated as of December 22, 2011, is among **JPMORGAN CHASE BANK, N.A.**, as Global Administrative Agent (the "Global Administrative Agent"), and **JPMORGAN CHASE BANK, N.A., TORONTO BRANCH**, as the Canadian Administrative Agent (the "Canadian Administrative Agent"), and together with the Global Administrative Agent, the "Administrative Agents"), on behalf of the various financial institutions as are or may become parties to the U.S. Credit Agreement (the "U.S. Lenders"), the various financial institutions as are or may become parties to the Canadian Credit Agreement (the "Canadian Lenders"), any Secured Swap Provider, any Bank Product Provider, any U.S. Issuing Bank, any Canadian Issuing Bank, the other Agents party to the U.S. Credit Agreement, and the other Agents party to the Canadian Credit Agreement.

RECITALS

A. The U.S. Borrower, the U.S. Lenders, the various financial institutions party thereto as Agents and the Global Administrative Agent (collectively, the "U.S. Agents") are entering into that certain Amended and Restated Credit Agreement dated of even date herewith (as heretofore amended, supplemented or modified, the "U.S. Credit Agreement").

B. The Canadian Borrower, the Canadian Lenders, the various financial institutions party thereto as Agents and the Canadian Administrative Agent (collectively, the "Canadian Agents") are entering into that certain Amended and Restated Credit Agreement dated of even date herewith (as heretofore amended, supplemented or modified, the "Canadian Credit Agreement").

C. The U.S. Lenders and the Canadian Lenders (collectively, the "Combined Lenders"), the Agents (the Combined Lenders and the Agents collectively being the "Lender Group"), the Combined Issuing Banks, the Bank Product Providers and the Secured Swap Providers (the Lender Group, the Combined Issuing Banks, the Bank Product Providers and the Secured Swap Providers collectively being the "Creditors") are entering into this Agreement to establish their relative rights with respect to payment of their respective Combined Obligations owed under the Combined Loan Documents, to agree as to the exercise of certain remedies and to appoint the Global Administrative Agent as agent hereunder for purposes of dealing with the Combined Loan Documents and apportioning payments among the Creditors and for other purposes as set forth herein.

D. The execution and delivery of this Agreement is a condition to the performance by each Combined Lender of its obligations under the Combined Credit Agreement to which it is a party.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the U.S. Agents and the U.S. Lenders to enter into the U.S. Credit Agreement, and the Canadian Agents and the Canadian Lenders to enter into the Canadian Credit Agreement, the parties hereto hereby agree as follows:

ARTICLE 1
DEFINITIONS AND TERMS OF CONSTRUCTION

1.1. **Certain Definitions**. When used herein, and unless otherwise defined herein, terms and expressions defined in the U.S. Credit Agreement shall have those meanings; terms defined in only one of the Combined Credit Agreements shall have the meanings specified in such Combined Credit Agreement; and the following additional terms when used in this Agreement, including its preamble and recitals, shall, except as otherwise set forth in this Section or where the context otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

“**Acceleration**” means either (a) the termination of (i) the Canadian Commitment or (ii) the U.S. Commitment, in either case by reason of its stated maturity date or (b) the acceleration of the due date for payment of the Secured Indebtedness under a Combined Credit Agreement automatically, or by reason of a declaration or demand made, in accordance with the terms thereof.

“**Acceleration Date**” means the date on which an Acceleration occurs.

“**Administrative Agents**” has the meaning set forth in the preamble hereto.

“**Agents**” means, collectively, the U.S. Agents and the Canadian Agents, unless the context requires otherwise.

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

“**Borrower**” means the U.S. Borrower or the Canadian Borrower.

“**Borrowing Base Deficiency**” means the amount by which (a) either the Revolving Credit Exposures under the U.S. Credit Agreement or the Revolving Credit Exposures under the Canadian Credit Agreement exceed (b) the then-current Allocated U.S. Borrowing Base or Allocated Canadian Borrowing Base, respectively.

“**Canadian Administrative Agent**” has the meaning set forth in the preamble hereto.

“**Canadian Agents**” has the meaning set forth in paragraph E of the recitals hereof.

“**Canadian Borrower**” means Quicksilver Resources Canada Inc., an Alberta, Canada corporation, as the borrower under the Canadian Credit Agreement.

“**Canadian Collateral**” means any asset on which a Lien has been granted pursuant to a Canadian Security Instrument for the benefit of the Canadian Agents, Canadian Lenders, Canadian Bank Product Providers or Secured Swap Providers party to a Canadian Swap Agreement, which collateral secures the Canadian Obligations but not any portion of the U.S. Obligations.

“**Canadian Commitment**” means the “Commitment” as defined in the Canadian Credit Agreement.

“Canadian Credit Agreement” has the meaning set forth in paragraph B of the recitals hereof.

“Canadian Hedging Obligations” means all obligations of the Canadian Borrower or any of its Restricted Subsidiaries under any Swap Agreement owed to any Secured Swap Provider, each as defined in the Canadian Credit Agreement.

“Canadian Issuing Banks” means the “Issuing Banks” as defined in the Canadian Credit Agreement.

“Canadian Lenders” has the meaning set forth in the preamble hereto.

“Canadian Loan Documents” means the “Loan Documents” as defined in the Canadian Credit Agreement.

“Canadian Loan Party” means the Canadian Borrower and each Guarantor under the Canadian Credit Agreement.

“Canadian Obligations” means, at any time, the Secured Indebtedness under the Canadian Credit Agreement.

“Canadian Payments” means all amounts received by the Global Administrative Agent and the Canadian Administrative Agent from and after the Acceleration Date in respect of Canadian Collateral or by virtue of any payment or prepayment made by or for the account of the Canadian Borrower (including, for greater certainty, all amounts realized pursuant to any sale, foreclosure, enforcement, liquidation or any other disposition of any Canadian Collateral (net of the costs and expenses incurred by the Global Administrative Agent or the Canadian Administrative Agent in connection therewith and any taxes, assessments or prior liens, or pursuant to any indemnity)) or by virtue of an exercise of any right of Set-Off with respect to the Canadian Obligations to the fullest extent permitted by law.

“Collateral” means, collectively, all assets on which a Lien has been granted to secure the U.S. Obligations and/or the Canadian Obligations under the Combined Loan Documents.

“Combined Commitments” means, at any time, the aggregate of the U.S. Commitments and the Canadian Commitments at such time, with amounts outstanding in Canadian Dollars being converted into the Dollar Equivalent thereof (calculated by the Global Administrative Agent as of such time pursuant to the U.S. Credit Agreement).

“Combined Credit Agreements” means the U.S. Credit Agreement and the Canadian Credit Agreement.

“Combined Hedging Obligations” means the sum of the U.S. Hedging Obligations and the Canadian Hedging Obligations.

“Combined Issuing Banks” means the U.S. Issuing Banks and the Canadian Issuing Banks.

“Combined Lenders” has the meaning set forth in paragraph C of the recitals hereof.

“Combined Loan Documents” means the U.S. Loan Documents and the Canadian Loan Documents.

“Combined Loan Party” means a Canadian Loan Party or a U.S. Loan Party.

“Combined Obligations” means, at any time, the aggregate of all U.S. Obligations and all Canadian Obligations, with amounts outstanding in Canadian Dollars being converted into the Dollar Equivalent thereof (calculated by the Global Administrative Agent as of such time pursuant to the U.S. Credit Agreement).

“Creditors” has the meaning set forth in paragraph C of the recitals hereof.

“Default” means a Default or Event of Default under (and as defined in) either of the Combined Credit Agreements.

“Enforcement Action” has the meaning set forth in Section 2.7.

“Event of Default” means an Event of Default under (and as defined in) either of the Combined Credit Agreements.

“Global Administrative Agent” has the meaning set forth in the preamble hereto.

“Global Borrowing Base Deficiency” means the amount by which (a) the Combined Credit Exposure exceeds (b) the then-current Global Borrowing Base.

“Lender Group” has the meaning set forth in paragraph C of the recitals hereof.

“Letter of Credit Fees” means the fees incurred by the U.S. Loan Parties and the Canadian Loan Parties, as applicable, pursuant to Section 3.05(b) of the U.S. Credit Agreement and Section 3.05(b) of the Canadian Credit Agreement.

“Loans” means, as the context requires, either the “Loans” as defined in the U.S. Credit Agreement or the “Loans” as defined in the Canadian Credit Agreement.

“Obligations” means, as the context requires, either the “Secured Indebtedness” as defined in the U.S. Credit Agreement or the “Secured Indebtedness” as defined in the Canadian Credit Agreement.

“Security Instrument” means, as the context requires, either a “Security Instrument” as defined in the U.S. Credit Agreement or a “Security Instrument” as defined in the Canadian Credit Agreement.

“Set-Off” means the exercise of any right of set-off, combination of accounts, bankers’ liens or similar mechanisms.

“Sharing Date” has the meaning set forth in Section 3.2(b).

“Sharing Percentage” means, at any time:

(a) for the U.S. Lenders, the percentage determined by dividing the U.S. Obligations (with amounts outstanding in Canadian Dollars being converted into the Dollar Equivalent thereof (calculated by the Global Administrative Agent as of such time pursuant to the U.S. Credit Agreement)) by all Combined Obligations at such time; and

(b) for the Canadian Lenders, the percentage determined by dividing the Canadian Obligations (with amounts outstanding in Canadian Dollars being converted into the Dollar Equivalent thereof (calculated by the Global Administrative Agent as of such time pursuant to the U.S. Credit Agreement)) by all Combined Obligations at such time.

“Swap Agreement” means, as the context requires, a “Swap Agreement” as defined in the U.S. Credit Agreement or a “Swap Agreement” as defined in the Canadian Credit Agreement.

“U.S. Agents” has the meaning set forth in paragraph A of the recitals hereof.

“U.S. Borrower” means Quicksilver Resources Inc., a corporation organized under the laws of the State of Delaware, as the borrower under the U.S. Credit Agreement.

“U.S. Collateral” means the “Collateral” as defined in the U.S. Credit Agreement except for any Canadian Collateral.

“U.S. Commitment” means the “Commitment” as defined in the U.S. Credit Agreement.

“U.S. Credit Agreement” has the meaning set forth in paragraph A of the recitals hereof.

“U.S. Hedging Obligations” means all obligations of the U.S. Borrower or any of its Domestic Subsidiaries under any Swap Agreement owed to any Secured Swap Provider, each as defined in the U.S. Credit Agreement.

“U.S. Issuing Banks” means the “Issuing Banks” as defined in the U.S. Credit Agreement.

“U.S. Lenders” has the meaning set forth in the preamble hereto.

“U.S. Loan Documents” means the “Loan Documents” as defined in the U.S. Credit Agreement.

“U.S. Loan Party” means the U.S. Borrower and each U.S. Guarantor as defined in the U.S. Credit Agreement.

“U.S. Obligations” means, at any time, the Secured Indebtedness under the U.S. Credit Agreement.

“U.S. Payments” means all amounts received by the Global Administrative Agent after the Sharing Date in respect of U.S. Collateral or pursuant to a Guarantee of the Combined

Obligations or by virtue of any payment or prepayment made by or for the account of the U.S. Borrower (including, for greater certainty, all amounts realized pursuant to any sale, foreclosure, enforcement, liquidation or any other disposition of any U.S. Collateral (net of the costs and expenses incurred by the Global Administrative Agent in connection therewith and any taxes, assessments or prior liens or pursuant to any indemnity)) or by virtue of an exercise of any right of Set-Off with respect to the U.S. Obligations to the fullest extent permitted by law.

1.2. **Headings.** Article and section headings of this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Agreement.

1.3. **Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, increased, renewed, extended, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, increases, renewals, extensions, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, provided such successors and assigns are permitted by the Combined Loan Documents, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Articles, Sections, Paragraphs, Exhibits and Schedules shall be construed to refer to Articles, Sections and Paragraphs of, and Exhibits and Schedules to, this Agreement.

ARTICLE 2 CO-OPERATIVE ADMINISTRATION

2.1. **Notice Requirements.** Each Administrative Agent agrees:

(a) concurrently with the delivery thereof by such Administrative Agent to a Borrower, to deliver to the other Administrative Agent a copy of any written notice of any Default; and

(b) to deliver to the other Administrative Agent prompt written notice of any Acceleration or an Event of Default or determination that an Acceleration or an Event of Default has occurred under its Combined Credit Agreement or that all or any portion of the Combined Commitments are terminated.

2.2. **Co-operation.** Each Administrative Agent (and, where applicable, the Combined Lenders) agrees with the other Administrative Agent (and, where applicable, the other Combined Lenders) that:

(a) to the extent available, such Administrative Agent will from time to time promptly provide such information in its possession to the other Administrative Agent as may be

reasonably necessary to enable the other Administrative Agent to make any calculation referred to in or necessary to implement Article 3 or otherwise reasonably required by the other Administrative Agent for any other purpose;

(b) to the extent reasonably possible and provided that an Administrative Agent shall not be required to breach any confidentiality agreement to which it is party or any applicable law, such Administrative Agent will from time to time consult with the other Administrative Agent in good faith regarding the enforcement of the Creditors' rights and remedies under the Combined Loan Documents with a view to recovering amounts due under the Combined Loan Documents in an effective and cost-efficient manner; and

(c) if, after a Default under any of the Combined Loan Documents, such Administrative Agent gains access to any Combined Loan Party's Property, financial information or databases pursuant to the exercise of its secured rights, such Administrative Agent will provide reasonable access to the other Administrative Agent to the extent such Administrative Agent may legally do so.

2.3. Information from Combined Lenders. From time to time following the occurrence of an Acceleration, each Combined Lender shall promptly provide its Administrative Agent with all necessary information to enable such Administrative Agent to calculate the U.S. Obligations and the Canadian Obligations.

2.4. Election to Pursue Remedies.

(a) The amounts payable by the Combined Loan Parties at any time under any of the Combined Loan Documents to each Combined Lender shall be separate and independent debts, except that no Creditor (including any Secured Swap Provider or Bank Products Provider) shall be entitled to enforce any right (other than the right of Set-Off or any right under any Swap Agreement or any Bank Product agreement, other than the right to demand and receive payment from a Combined Loan Party of an amount calculated as being due in respect of the occurrence of an early termination date under such Swap Agreement or Bank Product agreement ("**Closeout Payment Right**")) arising out of any of the Combined Loan Documents except through the Global Administrative Agent. Each of the Creditors agree that such Creditor will not cancel its respective Commitment, if applicable, under any applicable Combined Credit Agreement or accelerate any obligations owed to such Creditor unless the Majority Lenders have so agreed. Each Creditor agrees that no Creditor other than the Global Administrative Agent, or its designee, shall have any right individually to realize upon any Liens granted under the Combined Loan Documents or to otherwise enforce or exercise any remedy in respect of the Combined Loan Documents (other than the right of Set-Off at law or specified in the Combined Loan Documents or any right under any Swap Agreement or Bank Product agreement other than a Closeout Payment Right, but in any event, subject to the terms thereof), it being understood and agreed that such remedies may be exercised only by the Global Administrative Agent, or its designee, for the ratable benefit of the Creditors in accordance with the provisions of this Agreement. Each Creditor further agrees that such Creditor shall not individually institute any judicial action pertaining to the Combined Loan Documents or exercise any other remedy (other than the right of Set-Off at law or specified in the Combined Loan Documents or any right under any Swap Agreement or Bank Product agreement other than a Closeout Payment Right, but in

any event, subject to the terms thereof), pertaining to the Combined Loan Documents, except with the consent of the Majority Lenders.

(b) Subject to Sections 2.6 and 2.7, the Global Administrative Agent shall take or, as appropriate, direct the appropriate trustee or agent to take any and all actions provided for in the Combined Loan Documents relating to the pursuit of remedies, including the foreclosure or disposition of Collateral, if any, only if such actions are authorized as provided in this Section. The Canadian Administrative Agent agrees that it will undertake to perform, and comply with, any instructions provided to it by the Global Administrative Agent, provided, that such instructions are not inconsistent with, or contrary to, the terms and provisions of this Agreement.

(c) Upon the occurrence and during the continuance of any Event of Default, the Combined Lenders shall vote on whether or not to pursue any remedy or remedies available to the Creditors at law or otherwise, including whether or not to terminate the Combined Commitments, accelerate any of the Combined Obligations and/or foreclose on or dispose of the Collateral, if any. If the Majority Lenders at such time vote to pursue any particular remedy or remedies, including foreclosure or disposition of the Collateral, instructions specifying the particular action to be taken from the Majority Lenders shall be delivered to the Global Administrative Agent. Subject to Section 2.7, upon receipt by the Global Administrative Agent of such instructions from the Majority Lenders, with any additional indemnities appropriate for such instructions as requested pursuant to Section 2.5(b), the Global Administrative Agent shall immediately commence to take or direct the instructed actions (and continue to take such actions) relating to such remedies.

(d) Subject to Section 2.7, upon the written instruction of the Majority Lenders, with any additional indemnities appropriate for such instructions as requested pursuant to Section 2.5(b), the Global Administrative Agent shall (i) take or direct any action provided for in the Combined Loan Documents or proceed to enforce, or direct the enforcement of, consistent with the Combined Loan Documents and applicable law, the rights or powers provided in the Combined Loan Documents and under applicable law for the benefit of the Creditors and shall give such notice or direction or shall take such action or exercise such right or power hereunder or under any of the Combined Loan Documents incidental thereto as shall be reasonably specified in such instructions and consistent with the terms of the Combined Loan Documents and this Agreement; and/or (ii) execute such instruments or agreements or take such other action in connection with the Combined Loan Documents as may be deemed reasonably necessary or appropriate by the Majority Lenders or all Combined Lenders, as applicable, and consistent with the terms of the Combined Loan Documents and this Agreement. Such action may include, but is not limited to, (x) the giving of any notice, approval, consent or waiver which may be called for under the Combined Loan Documents, (y) the requiring of the execution and delivery of additional Combined Loan Documents, or (z) employing agents or directing trustees in order to accomplish the actions requested.

(e) Nothing in this Section 2.4 shall impair the right of any Combined Lender to exercise its rights of Set-Off existing at law or under the Combined Loan Documents, but in any event, subject to the terms thereof.

(f) Nothing in this Section 2.4 shall impair the right of any Secured Swap Provider to exercise any right it may have under a Swap Agreement or the right of any Bank Product Provider to exercise any right it may have under its Bank Product agreements, including, without limitation, the right of a Secured Swap Provider to designate an early termination date and to calculate all amounts due and owing pursuant to the provisions of the Swap Agreement, it being acknowledged and agreed by each Secured Swap Provider and Bank Product Provider that, once such final, net amount is determined, it shall then provide any statement of its calculations and demand for payment due to it to both the affected Combined Loan Party and the Global Administrative Agent and that the provisions of this Section 2.4 shall thereafter apply to the enforcement of its right to receive such payment.

2.5. Enforcement. From and after any Acceleration:

(a) where reasonably practicable in the circumstances and in any event prior to the seeking of the appointment of a receiver or receiver-manager or filing a bankruptcy petition in respect of any Combined Loan Party, each Administrative Agent agrees to meet (which may be via telephone) with the other Administrative Agent during reasonable business hours and to consult and cooperate with the other Administrative Agent in good faith regarding the enforcement of its rights and the rights of the Creditors with a view to recovering amounts due under the Combined Loan Documents in an efficient and cost-effective manner; and

(b) the Global Administrative Agent, acting on behalf of the Creditors, shall cause to be provided any reasonable indemnity that may be necessary for such receiver or receiver-manager or trustee described in Section 2.5(a), to the extent of each Creditor's percentage of the Combined Obligations represented by the U.S. Obligations or Canadian Obligations, as applicable, owing to such Creditor, with respect to the obligations to which the indemnity relates.

2.6. Duty of the Global Administrative Agent.

(a) The Global Administrative Agent shall not be obligated to follow any instructions of any one or more of the Combined Lenders if: (i) such instructions conflict with the provisions of this Agreement, any other Combined Loan Document or any applicable law, or (ii) the Global Administrative Agent, or its designees, have not been adequately indemnified to its or their satisfaction. Nothing in this Agreement shall impair the right of the Global Administrative Agent in its discretion to take any action to the extent that the consent of any of the Combined Lenders is not required or to the extent such action is not prohibited by the terms hereof. In the absence of written instructions, containing the appropriate indemnities, from the Combined Lenders or Majority Lenders as appropriate for any particular matter, the Global Administrative Agent shall have no duty to take or refrain from taking any action unless such action or inaction is explicitly required by the terms of this Agreement.

(b) Beyond its duties expressly provided under this Agreement or in any other Combined Loan Document and its duties to account to the Creditors and/or the Combined Loan Parties for monies and other Property received by the Global Administrative Agent hereunder or under any other Combined Loan Document, the Global Administrative Agent shall not have any implied duty as to any Person or Property (whether or not the same constitutes Collateral) in its possession or control or in the possession or control of any of its agents or nominees, or any

income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

2.7. Emergency Powers of the Administrative Agents. If the Global Administrative Agent determines, acting reasonably, that (a) it is in the best interests of the Creditors that any Administrative Agent take action to enforce the rights of the Creditors under any Security Instrument or foreclose on or otherwise pursue a remedy with respect to any Collateral (each an "**Enforcement Action**") and (b) the time needed for obtaining of the consents of the Majority Lenders would impair the value of any Collateral or otherwise jeopardize the Liens created under the Security Instruments or the rights of the Creditors under the Combined Loan Documents (including under the Security Instruments), then, notwithstanding anything herein to the contrary, the Global Administrative Agent is hereby authorized to take or direct, until the Majority Lenders provide directions to the contrary, such Enforcement Action as it deems necessary or appropriate, provided that the Global Administrative Agent shall give contemporaneous notice (with reasonable details) to the Creditors of its taking, or intent to take, such Enforcement Action. No Administrative Agent shall be liable for any Enforcement Action taken in accordance with this Section except in the case of such Administrative Agent's gross negligence or willful misconduct (**IT BEING UNDERSTOOD THAT IT IS THE INTENTION OF THE PARTIES HERETO THAT NEITHER ADMINISTRATIVE AGENT SHALL BE LIABLE IN THE CASE OF ITS OWN NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE), REGARDLESS OF WHETHER SUCH NEGLIGENCE IS SOLE OR CONTRIBUTORY, ACTIVE OR PASSIVE, IMPUTED, JOINT OR TECHNICAL.**)

ARTICLE 3

CANADIAN PAYMENTS; *PARI PASSU* SHARING OF U.S. PAYMENTS

3.1. Overall Intent. It is the intention of the Combined Lenders that (a) following the occurrence of an Acceleration Date, the Global Administrative Agent shall promptly apply all Canadian Payments for the payment only of the Canadian Obligations and (b) following the occurrence of the Sharing Date, the Creditors shall share in U.S. Payments received *pro rata* to their respective proportions of the Combined Obligations as of such Acceleration Date (after deducting all Canadian Payments theretofore made to the Canadian Lenders and, as applicable, their Affiliates from and after such Acceleration Date) pursuant to the terms and conditions set forth below.

3.2. Payments Received on or after the Sharing Date.

(a) **Canadian Payments.** From and after the Acceleration Date, all Canadian Payments shall be applied only to Canadian Obligations promptly by the Global Administrative Agent in the following order of priority:

FIRST: to the ratable payment and reimbursement of all fees, expenses and indemnities owed to any Canadian Agent and Canadian Issuing Bank, in each case in its capacity as such, as the case may be (including the legal fees and expenses of their respective agents and counsel);

SECOND: without duplication of clause FIRST, to the ratable payment and reimbursement of all fees, expenses and indemnities owed to the Canadian Lenders under or provided for under any Canadian Loan Document;

THIRD: to the ratable payment of accrued and unpaid interest on all Loans owed to the Canadian Lenders under or provided for under any Canadian Loan Document;

FOURTH: to the ratable payment of the outstanding principal balance of all other Canadian Obligations (including any payments due with respect to any Canadian Hedging Obligations and Bank Product Obligations);

FIFTH: to the Global Administrative Agent to hold as cash collateral to reimburse Canadian Issuing Banks under the Canadian Loan Documents for all amounts that may thereafter reasonably be incurred in connection with any outstanding "Letters of Credit," as defined in the Canadian Credit Agreement; and

FINALLY: after the payment in full of the Canadian Obligations, to the payment of the remainder, if any, to the Canadian Borrower or its successor or as a court of competent jurisdiction may otherwise direct.

Notwithstanding any other provision of this Agreement or any other Combined Loan Document to the contrary, no Canadian Payments shall be applied to, or utilized by the Global Administrative Agent or any Combined Lender to satisfy, any obligation, fee, expense, indemnity or other amount other than the Canadian Obligations in the manner set forth in this Section 3.2(a).

(b) **Escrow of U.S. Payments**. In the event of any sale, foreclosure, enforcement, liquidation or any other disposition of any U.S. Collateral on or after an Acceleration Date, the Global Administrative Agent shall hold in escrow (pursuant to an arrangement satisfactory to the Global Administrative Agent) the proceeds therefrom (net of the costs and expenses incurred by the Global Administrative Agent in realizing such proceeds, which costs and expenses may be disbursed to reimburse the Global Administrative Agent prior to the Sharing Date) for the benefit of the Creditors, for the application of such proceeds pursuant to Section 3.2(c), until the earliest to occur of (i) the sale, foreclosure, enforcement, liquidation or any other disposition of substantially all of the Canadian Collateral, (ii) the determination of the Global Administrative Agent and the Majority Lenders, in their sole discretion, that U.S. Payments and Canadian Payments are in the aggregate sufficient to repay in full all Combined Obligations or (iii) any other date as may be agreed upon by the Global Administrative Agent and the Majority Lenders (the date on which any of the foregoing first occurs, the "**Sharing Date**"). Upon the Sharing Date, the Global Administrative Agent shall promptly apply the U.S. Payments in accordance with Section 3.2(c).

(c) **U.S. Payments**. Following the occurrence of an Acceleration Date and the release of U.S. Payments from escrow on the Sharing Date pursuant to Section 3.2(b), the U.S. Agents, U.S. Lenders, the Secured Swap Providers and Bank Product Providers to the U.S. Borrower and its Subsidiaries, and their Affiliates, on the one hand, and the Canadian Agents, Canadian Lenders, the Secured Swap Providers and Bank Product Providers to the Canadian

Borrower and its Subsidiaries, and their Affiliates, on the other hand, shall share in U.S. Payments according to the relevant Sharing Percentages, in each case as determined as of the Acceleration Date. Subject to Section 3.2(d) and (e), the Global Administrative Agent shall promptly apply the U.S. Payments in the following order of priority:

FIRST: to the ratable payment and reimbursement, based on the respective Sharing Percentages, of all fees, expenses and indemnities owed to the Agents, the U.S. Issuing Banks and the Canadian Issuing Banks, in their capacities as such, as the case may be, including the legal fees and expenses of their respective agents and counsel (it being understood that the U.S. Agents and U.S. Issuing Banks shall be paid based on the Sharing Percentage for U.S. Lenders and that the Canadian Agents and Canadian Issuing Banks shall be paid based on the Sharing Percentage for Canadian Lenders);

SECOND: without duplication of clause FIRST, to the ratable payment and reimbursement, based on the respective Sharing Percentages, of all fees, expenses and indemnities owed to the Combined Lenders under or provided for under any Combined Loan Document;

THIRD: to the ratable payment, based on the respective Sharing Percentages, of accrued and unpaid interest on all Loans owed to the Combined Lenders under or provided for under any Combined Loan Document;

FOURTH: to the ratable payment, based on the respective Sharing Percentage, of the outstanding principal balance of all other Combined Obligations (including any payments due with respect to any Combined Hedging Obligations and Bank Product Obligations);

FIFTH: to the Global Administrative Agent to hold as cash collateral to reimburse the Combined Issuing Banks under the Combined Loan Documents for all amounts payable in U.S. Dollars or Canadian Dollars which may thereafter reasonably be incurred in connection with any outstanding Letters of Credit and "Letters of Credit," as defined in the Canadian Credit Agreement, in each case whether denominated in U.S. Dollars or Canadian Dollars under the Combined Loan Documents; and

FINALLY: after the payment in full of the Combined Obligations, to the payment of the remainder, if any, to the U.S. Borrower or its successor or as a court of competent jurisdiction may otherwise direct.

(d) **Reduction in Pro Rata Sharing of U.S. Payments.** Notwithstanding anything in this Agreement to the contrary but subject to Section 3.2(e), any portion of the U.S. Payments otherwise payable to the Canadian Agents, Canadian Lenders and their Affiliates pursuant to Section 3.2(c) by virtue of their respective Sharing Percentage shall immediately be reduced by an amount equal to 100% of all Canadian Payments to such Canadian Agents, Canadian Lenders and Affiliates pursuant to Section 3.2(a) (with Canadian Dollars being converted into the Dollar Equivalent thereof (as calculated by the Global Administrative Agent pursuant to the U.S. Credit Agreement)).

(e) **Non-Sharing of U.S. Payments.** Notwithstanding anything in this Agreement to the contrary, in the event that (i) the U.S. Payments and the Canadian Payments are in the

aggregate insufficient to repay 100% of the Combined Obligations but (ii) the Canadian Payments are in excess of what the Canadian Lenders and their Affiliates would otherwise be entitled pursuant to Section 3.2(c) based on the aggregate amount represented by their Sharing Percentage, then the U.S. Payments shall be used solely to pay the U.S. Obligations until all U.S. Obligations are repaid in full and all cash collateral required to be provided in respect of Letters of Credit issued under the U.S. Credit Agreement has been provided.

(f) **Payments Received By Creditors.** If any Creditor shall obtain payment of any Combined Obligation from any Combined Loan Party or through the exercise of any right of Set-Off, banker's lien or counterclaim or similar right or otherwise through the exercise of any remedy or any other effort to collect amounts due from any Combined Loan Party, then such Creditor shall (i) promptly notify the Global Administrative Agent, (ii) hold such amounts in trust for the benefit of the applicable Creditors until forwarded to the Global Administrative Agent for purposes of making distributions in accordance with Sections 3.2(a) and (c), and (iii) as soon as practicable, forward such amount in immediately available funds to the Global Administrative Agent for such distribution.

(g) **Conversion.** If amounts are due in Canadian Dollars at any level under Section 3.2(c), then the Global Administrative shall convert amounts then held on deposit in U.S. Dollars into Canadian Dollars until such amounts are paid in full, subject to the provisions of Section 3.2(c). When any sum is to be converted from U.S. Dollars into Canadian Dollars in accordance with this Agreement or to make any payment required hereunder, the Global Administrative Agent shall exchange such amount in U.S. Dollars as is required to obtain the required amount of Canadian Dollars in accordance with customary banking practices, on the date upon which such conversion or payment is specified. If a payment is made at any level and such amount is insufficient to pay in full the amounts owed, due to the conversion of a sum due from U.S. Dollars to Canadian Dollars, the payee shall immediately notify the Global Administrative Agent and the Global Administrative Agent will make an additional payment prior to making distributions to subsequent priorities to ensure the payee has received the appropriate amount due.

(h) **Release of Amounts Held As Cash Collateral.** If any amounts are held on deposit as cash collateral for any Combined Obligation in respect of Letters of Credit (as defined in either Combined Credit Agreement) and such Combined Obligation ceases to be contingent, any funds held as cash collateral up to the amount of such Combined Obligations which has become fixed shall be distributed *pro rata* to the holders of such Combined Obligation (or if such Letters of Credit are not fully cash collateralized, then a pro rata distribution shall be made). If all such contingent obligations have expired, any excess shall be applied as contemplated by Section 3.2.

(i) **Payments Received on or after an Event of Default but prior to an Acceleration Date.** If any Event of Default shall have occurred and be continuing prior to the occurrence of an Acceleration Date, all amounts received by the Global Administrative Agent from any Combined Loan Party, including any realizations from U.S. Collateral or Canadian Collateral, shall be held as cash collateral by the Global Administrative Agent until either (i) such amounts shall be applied as contemplated by Section 3.2 on the Sharing Date or (ii) such amounts are distributed by the Global Administrative Agent with the consent of the Majority

Lenders to the U.S. Borrower or its successor, after consultation by the Global Administrative Agent with the U.S. Borrower or its successor, or as a court of competent jurisdiction may otherwise direct.

(j) **Payments to Cure Deficiencies.** Upon the occurrence of a Global Borrowing Base Deficiency or a U.S. Borrowing Base Deficiency, all amounts that are paid to cure such Global Borrowing Base Deficiency or U.S. Borrowing Base Deficiency shall be applied to the payment of Loans under the U.S. Credit Agreement in accordance with the prepayment provisions of such Credit Agreement.

(k) **Paramountcy of Pro Rata Treatment.** The arrangements contemplated by this Agreement shall apply notwithstanding the time of any demand, any Event of Default or any Acceleration under any Combined Loan Document; the date of execution, delivery, attachment, perfection or registration of any “Liens” as defined in any Combined Credit Agreement or Security Instrument (or lack of any thereof); the date of advance of any funds; the date of appointment of any receiver or receiver-manager or bankruptcy trustee or of taking any other enforcement proceedings; the date of obtaining any judgment; the date of notification in respect of any account payable; any provision of any applicable Governmental Rule of any Governmental Authority; any defense, claim or any right not provided under this Agreement; or the terms of any agreement between any Creditor and/or any Combined Loan Party under any other document or instrument between or among such parties, whether or not bankruptcy, receivership or insolvency proceedings shall at any time have been commenced.

3.3. Bankruptcy Preferences. If any payment actually received by any Combined Lender is subsequently invalidated, declared to be fraudulent or preferential or set aside by a court of competent jurisdiction and is required by such court to be repaid to a trustee, receiver or any other Person under any bankruptcy law, state, provincial or Federal law, common law or equitable cause, then the Global Administrative Agent shall distribute any cash collateral then held by the Global Administrative Agent in accordance with the orders of such court. If the amounts then held by the Global Administrative Agent are insufficient for such purpose, then each other Combined Lender shall pay to such Person as directed by such court and/or purchase participations upon demand in an amount equal to a ratable portion of such payment according to the aggregate amounts distributed to such Person as directed by such court by the Global Administrative Agent so that the *pro rata* treatment contemplated by Section 3.2(c) is achieved.

3.4. Information. From time to time following the occurrence of a Global Borrowing Base Deficiency, U.S. Borrowing Base Deficiency or the Sharing Date, each Combined Lender shall promptly provide its Administrative Agent with all necessary information to enable the Global Administrative Agent to calculate U.S. Obligations or Canadian Obligations, or the Sharing Percentages of the Combined Lenders.

ARTICLE 4 ASSIGNMENT

4.1. Assignees. No provision of this Agreement shall contravene any provision of any Combined Credit Agreement in any manner by restricting the assignment, participation or other transfer by a Combined Lender of all or part of its right, title or interest under its Combined

Credit Agreement pursuant to such Combined Credit Agreement; provided that, unless the assignee becomes a Combined Lender for purposes of this Agreement in accordance with Article 10 of the Combined Credit Agreements and agrees to comply with the terms and provisions of this Agreement, the assigning Lender shall remain responsible for performance of this Agreement with respect to the interest assigned, all as more fully set forth herein.

ARTICLE 5 MISCELLANEOUS

5.1. **No Partnership or Joint Venture.** Nothing contained in this Agreement, and no action taken by any Creditor (or any of them) pursuant hereto, is intended to constitute or shall be deemed to constitute any Creditors a partnership, association, joint venture or other entity.

5.2. **Notices.** All notices, requests and other communications to any party hereunder shall be delivered in accordance with the delivery instructions set forth in Section 12.01 of the applicable Combined Credit Agreement.

5.3. **Amendments and Waivers.** Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed by the Majority Lenders; provided, however, that:

(a) the provisions of Article 3 of this Agreement, definitions used in or relating to Article 3 of this Agreement and the provisions of this Section 5.3 may be amended only with written consent of each Creditor adversely affected thereby;

(b) the provisions hereof relating to “Majority Lenders” may be amended only with the written consent of each Creditor adversely affected thereby;

(c) the provisions hereof requiring the vote or consent or approval of “all the Combined Lenders” may be amended only with the unanimous written consent of all the Combined Lenders; and

(d) the provisions hereof relating to the “Administrative Agents” may only be amended with the unanimous written consent of the Administrative Agents and the Majority Lenders.

5.4. **Payment Matters.** All payments to any Combined Lender hereunder shall be made to it, to the extent practicable, in accordance with the provisions of the relevant Combined Credit Agreement.

5.5. **Counterparts; Effectiveness.** This Agreement may be signed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute a single agreement, with the same effect as if the signatories thereto and hereto were upon the same instrument.

5.6. **Benefits.** This Agreement is solely for the benefit of, and shall be binding upon, the Creditors and their successors or assigns, and none of the Combined Loan Parties or any other third party shall have any right, benefit, priority or interest under or by reason of this Agreement.

5.7. GOVERNING LAW; JURISDICTION.

(a) THIS AGREEMENT AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE IN ANY WAY TO THIS AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EITHER CASE LOCATED IN NEW YORK COUNTY, NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. THIS SUBMISSION TO JURISDICTION IS NON-EXCLUSIVE AND DOES NOT PRECLUDE A PARTY FROM OBTAINING JURISDICTION OVER ANOTHER PARTY IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO IT AT THE ADDRESS SPECIFIED IN SECTION 12.01 OF EACH COMBINED CREDIT AGREEMENT OR SUCH OTHER ADDRESS AS IS SPECIFIED PURSUANT TO SAID SECTION 12.01 (OR ITS ASSIGNMENT AND ASSUMPTION), SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANOTHER PARTY IN ANY OTHER JURISDICTION.

(d) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY SUCH LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES; (iii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OR COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR

OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION.

5.8. **Time of the Essence.** Time is of the essence in this Agreement.

5.9. **Exculpation.** No Creditor makes any representation or warranty, and no Creditor and none of such Creditor's directors, officers, employees or agents shall (a) be responsible with respect to any recitals, representations or warranties, or for the execution, legality, validity, accuracy, sufficiency, genuineness, effectiveness or enforceability of this Agreement, any of the other Combined Loan Documents or any other instrument or document executed or delivered hereunder or thereunder or in connection herewith or therewith, (b) be under any duty to any other Creditor to inquire into or pass upon any of the foregoing matters, or to make any inquiry concerning the performance by any party under any of the Combined Loan Documents, or (c) in any event be liable as such for any action taken or omitted by it or them, except for its or their own gross negligence or willful misconduct. No Creditor assumes any responsibility for the financial condition of any party to the Combined Loan Documents (other than its own), for the security, value or existence of any of the Properties of the Combined Loan Parties, or for the performance of any obligations of any party to the Combined Loan Documents (other than its own). No Creditor shall incur any liability under or in respect of this Agreement, of any other Combined Loan Document or any instrument or document delivered under or pursuant hereto or thereto by relying upon any oral, telephonic, telegraphic, electronic or written request or notice, consent, waiver, amendment, certificate, affidavit, letter, telegram, statement, paper, schedule, agreement, report, instrument or document believed by it to be genuine and signed or sent by the proper Person or Persons; provided, however, that the foregoing shall not amend or modify any requirement in any Combined Loan Document that any notice under such Combined Loan Document be in writing.

5.10. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

5.11. **Certain Matters Relating to Collateral Generally.** If any Collateral or security shall be taken in respect of any of the Combined Obligations, the rights of the Creditors with regard to such Collateral or security shall be exercised through the Global Administrative Agent in accordance with this Agreement.

5.12. **Benefits of Article 11 of the Combined Credit Agreements.** Each Agent shall be entitled to the benefits of Article 11 of its Combined Credit Agreement and also to the benefits of Article IX of the other Combined Credit Agreement as if such Agent were a named party in such Article and party to such other Combined Credit Agreement (provided that any payment under the indemnification provisions of Section 12.03 of any Combined Credit

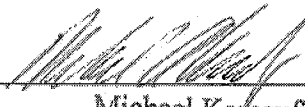
Agreement relating to the collection of the Combined Obligations thereunder shall be shared by the Combined Lenders as and to the extent herein provided), in connection with the performance under this Agreement.

5.13. NO ORAL AGREEMENTS. THIS WRITTEN AGREEMENT AND THE OTHER COMBINED LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date hereof by their respective officers thereunto duly authorized.

JPMORGAN CHASE BANK, N.A., as Global Administrative Agent and on behalf of the Combined Lenders, the Combined Issuing Banks, the Secured Swap Providers, Bank Product Providers and any other Agents not party to this Agreement

By: 
Name: Michael Karnauf
Title: Authorized Officer

JPMORGAN CHASE BANK, N.A., TORONTO BRANCH, as Canadian Administrative Agent and on behalf of the Canadian Lenders, the Canadian Issuing Banks, the Canadian Secured Swap Providers, Bank Product Providers and any other Canadian Agents not party to this Agreement


By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date hereof by their respective officers thereunto duly authorized.

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By: _____
Name:
Title:

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By: 
Name: **Michael N. Tam**
Title: **Senior Vice President**