
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): July 22, 2010

APACHE CORPORATION
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

1-4300
(Commission
File Number)

41-0747868
(I.R.S. Employer
Identification No.)

2000 Post Oak Boulevard
Suite 100
Houston, Texas 77056-4400
(Address of principal executive offices, including zip code)

(713) 296-6000
(Registrant's telephone number, including area code)

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))
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Item 1.01 Entry into a Material Definitive Agreement

Common Stock and Depositary Shares

On July 22, 2010, Apache Corporation (the “Company”) entered into (i) a common stock Underwriting Agreement, dated July 22, 2010 (the “Common Stock Underwriting Agreement”), among the Company and Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. Goldman, Sachs & Co. and J.P. Morgan Securities Inc., as representatives of the underwriters named therein (the “Common Stock Underwriters”), with respect to the offer and sale of 26,450,000 shares of the Company’s common stock, par value \$0.625 per share (the “Common Stock”) (which reflects the exercise of the Common Stock Underwriters’ option to purchase additional shares of Common Stock), and (ii) a depositary share Underwriting Agreement, dated July 22, 2010 (the “Depositary Shares Underwriting Agreement” and together with the Common Stock Underwriting Agreement, the “Underwriting Agreements”), among the Company and Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the underwriters named therein (the “Depositary Shares Underwriters” and together with the Common Stock Underwriters, the “Underwriters”), with respect to the offer and sale of 25,300,000 depositary shares (“Depositary Shares”), with each Depositary Share representing a 1/20th interest in a share of the Company’s 6.00% Mandatory Convertible Preferred Stock, Series D (“Mandatory Convertible Preferred Stock”) (which reflects the exercise of the Depositary Shares Underwriters’ option to purchase additional Depositary Shares). The securities sold pursuant to the Underwriting Agreements were registered under the Company’s registration statement on Form S-3 (File No. 333-155884). The closing of the sale of Common Stock and Depositary Shares occurred on July 28, 2010.

The Common Stock Underwriting Agreement sets forth the public offering price, and provides, among other things, that the Common Stock Underwriters will purchase the Common Stock from the Company at the public offering price, less a discount of \$2.64 per share.

The Depositary Shares Underwriting Agreement provides, among other things, that the Depositary Shares Underwriters will purchase the Depositary Shares from the Company at the public offering price, less a discount of \$1.50 per Depositary Share.

The Company also entered into a Deposit Agreement, dated as of July 28, 2010 (the “Deposit Agreement”), with Wells Fargo Bank, N.A., as depositary (the “Depositary”), on behalf of all holders from time to time of the receipts issued thereunder, which governs the deposit of the Mandatory Convertible Preferred Stock with the Depositary and the issuance by the Depositary of the Depositary Shares. A copy of the Deposit Agreement is attached hereto as Exhibit 4.2 and incorporated herein by reference.

Underwriting Agreements

The Underwriting Agreements include customary representations, warranties and covenants by the Company. They also provide for customary indemnification by each of the Company and the respective Underwriters party to the relevant agreement against certain

liabilities arising out of or in connection with sale of the Common Stock and Depositary Shares and for customary contribution provisions in respect of those liabilities.

The Underwriters and their affiliates have provided and in the future may continue to provide various financial advisory, cash management, investment banking, commercial banking and other financial services, including the provision of credit facilities, to the Company in the ordinary course of business for which they have received and will continue to receive customary compensation.

The foregoing summary of the material terms of the Underwriting Agreements and the transactions contemplated thereby is subject to, and qualified in its entirety by, the full text of the Underwriting Agreements, which are attached hereto as Exhibits 1.1 and 1.2 and incorporated herein by reference.

The Underwriting Agreements have been filed with this Current Report on Form 8-K to provide investors and security holders with information regarding their terms. They are not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Underwriting Agreements were made only for purposes of such agreements and as of specific dates, were solely for the benefit of the parties to such agreements, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures exchanged between the parties in connection with the execution of the Underwriting Agreements. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the agreements instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Underwriting Agreements and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Underwriting Agreements, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Item 3.03 Material Modification of the Rights of Security Holders

Under the terms of the Mandatory Convertible Preferred Stock, the Company's ability to declare or pay dividends or make distributions on, or purchase, redeem or otherwise acquire for consideration, shares of Common Stock, or any junior stock or parity stock currently outstanding or issued in the future, will be subject to certain restrictions in the event that the Company does not pay in full or declare and set aside for payment in full all accrued and unpaid dividends on the Mandatory Convertible Preferred Stock. The terms of the Mandatory Convertible Preferred Stock are more fully set forth in the Certificate of Designations (as defined below) described in Item 5.03 below and attached hereto as Exhibit 3.1 and incorporated herein by reference. A copy of the form of certificate for the Mandatory Convertible Preferred Stock is attached hereto as Exhibit 4.1 and incorporated herein by reference.

Item 5.03 Amendments to the Articles of Incorporation

In connection with the issuance of the Depositary Shares, the Company filed with the Secretary of State of the State of Delaware a Certificate of Designations (the “Certificate of Designations”) setting out the form and the terms of the Mandatory Convertible Preferred Stock, which amended the Company’s Restated Certificate of Incorporation, effective on July 28, 2010. The Mandatory Convertible Preferred Stock will rank, with respect to dividend rights and rights upon the Company’s liquidation, winding-up or dissolution:

- senior to all Common Stock of the Company and each other class of other capital stock or series of preferred stock issued after the original issue date of the Mandatory Convertible Preferred Stock unless the terms of that stock expressly provide that it ranks senior to, or equally with, the Mandatory Convertible Preferred Stock;
- junior to each class of capital stock or series of preferred stock established after the original issue date of the Mandatory Convertible Preferred Stock, the terms of which expressly provide that such class or series will rank senior to the Mandatory Convertible Preferred Stock; and
- junior to the Company’s and its subsidiaries’ existing and future indebtedness (including, in the case of the Company’s subsidiaries, trade payables).

The Company will pay cumulative dividends on each share of the Mandatory Convertible Preferred Stock at a rate of 6.00% per annum on the initial liquidation preference of \$1,000 per share. Dividends will accrue and cumulate from the date of issuance and, to the extent that the Company is legally permitted to pay dividends and its board of directors declares a dividend payable, the Company will, from November 1, 2010 until and including August 1, 2013 pay dividends on each February 1, May 1, August 1 and November 1, in cash and (whether or not declared prior to that date) on August 1, 2013 will pay or deliver, as the case may be, dividends in cash, shares of Common Stock, or a combination thereof, at its election.

Each share of Mandatory Convertible Preferred Stock will automatically convert into shares of Common Stock on August 1, 2013 if not earlier converted at the option of the holder upon the occurrence of a fundamental change (as defined in the Certificate of Designations). The number of shares issuable upon mandatory conversion of each share of Mandatory Convertible Preferred Stock will be a variable amount based on the average of the daily volume weighted average price per share of Common Stock during a specified period of 20 consecutive trading days with the number of shares of Common Stock ranging from 9.164 to 11.364 per share of Mandatory Convertible Preferred Stock, subject to anti-dilution adjustments.

At any time prior to July 15, 2013, holders of the Mandatory Convertible Preferred Stock may elect to convert their shares at the minimum conversion rate (as defined in the Certificate of Designations), and will receive accrued and unpaid dividends for past dividend periods but will not receive accrued and unpaid dividends for the current dividend period. Upon a fundamental change (as defined in the Certificate of Designations), holders of the Mandatory Convertible Preferred Stock may elect to convert their shares at a fundamental change conversion rate (as defined in the Certificate of Designations), and will receive accrued and unpaid dividends. The Company may elect to pay accrued and

unpaid dividends payable in connection with any conversion of the Mandatory Convertible Preferred Stock in cash, shares of Common Stock or a combination thereof.

Except as required by law or the Company's Restated Certificate of Incorporation, which includes the Certificate of Designations for the Mandatory Convertible Preferred Stock, the holders of Mandatory Convertible Preferred Stock have no voting rights (other than with respect to certain matters regarding the Mandatory Convertible Preferred Stock or when dividends payable on the Mandatory Convertible Preferred Stock have not been paid for an aggregate of six quarterly divided periods, or more, whether or not consecutive, as provided in the Certificate of Designations).

The foregoing summary of the material terms of the Certificate of Designations is subject to, and qualified in its entirety by, the full text of the Certificate of Designations, which is attached hereto as Exhibit 3.1 and incorporated herein by reference.

Item 7.01. Regulation FD Disclosure

The information in this Item 7.01, including Exhibit 99.1, is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of Section 18, and shall not be incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except as set forth by specific reference in such filing.

On July 28, 2010, the Company issued a press release announcing the closing of its Common Stock and Depositary Shares offerings, a copy of which is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

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| 1.1 | Common Stock Underwriting Agreement, dated July 22, 2010, among Apache Corporation and Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the underwriters named therein. |
| 1.2 | Depositary Shares Underwriting Agreement, dated July 22, 2010, among Apache Corporation and Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the underwriters named therein. |
| 3.1 | Certificate of Designations of 6.00% Mandatory Convertible Preferred Stock, Series D (including form of stock certificate). |
| 4.1 | Form of certificate for the 6.00% Mandatory Convertible Preferred Stock, Series D (included as Exhibit A to Exhibit 3.1). |

- 4.2 Deposit Agreement, dated as of July 28, 2010, between Apache Corporation and Wells Fargo Bank, N.A., as depositary, on behalf of all holders from time to time of the receipts issued thereunder (including form of Depositary Receipt).
- 4.3 Form of Depositary Receipt for the Depositary Shares (included as Exhibit A to Exhibit 4.2).
- 5.1 Opinion of Bracewell & Giuliani LLP.
- 23.1 Consent of Bracewell & Giuliani LLP (included in Exhibit 5.1).
- 99.1 Press release of Apache Corporation, dated July 28, 2010.

S I G N A T U R E

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.

APACHE CORPORATION

Dated: July 28, 2010

By: /s/ Roger B. Plank
Roger B. Plank, President
(Principal Financial Officer)

EXHIBIT INDEX

Exhibit Number	Description
1.1	Common Stock Underwriting Agreement, dated July 22, 2010, among Apache Corporation and Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the underwriters named therein.
1.2	Depository Shares Underwriting Agreement, dated July 22, 2010, among Apache Corporation and Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc. and J.P. Morgan Securities Inc., as representatives of the underwriters named therein.
3.1	Certificate of Designations of 6.00% Mandatory Convertible Preferred Stock, Series D (including form of stock certificate).
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APACHE CORPORATION

23,000,000 Shares of Common Stock (Par Value \$0.625 Per Share)

UNDERWRITING AGREEMENT

Dated: July 22, 2010

APACHE CORPORATION
23,000,000 Shares of Common Stock (Par Value \$0.625 Per Share)
UNDERWRITING AGREEMENT

July 22, 2010

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Goldman, Sachs & Co.
200 West Street
New York, New York 10282

J.P. Morgan Securities Inc.
383 Madison Avenue
New York, New York 10179

as Representatives of the several
Underwriters named in Schedule A hereto

Ladies and Gentlemen:

Apache Corporation, a Delaware corporation (the “Company”) confirms its agreement with Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), Citigroup Global Markets Inc. (“Citigroup”), Goldman, Sachs & Co. (“Goldman Sachs”), J.P. Morgan Securities Inc. (“JP Morgan”) and each of the other Underwriters named in Schedule A hereto (collectively, the “Underwriters,” which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Merrill Lynch, Citigroup, Goldman Sachs and JP Morgan are acting as representatives (in such capacity, the “Representatives”), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of an aggregate of 23,000,000 shares of Common Stock, par value \$0.625 per share, of the Company (“Common Stock”) as set forth in Schedule A hereto and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of 3,450,000 additional shares of Common Stock to cover overallocments, if any. The aforesaid 23,000,000 shares of Common Stock (the “Initial Securities”) to be purchased by the Underwriters and all or any part of the 3,450,000 shares of Common Stock subject to the option described in Section 2(b) hereof (the “Option Securities”) are herein called, collectively, the “Securities.” The Securities shall also include those related preferred stock purchase rights (the “Rights”) described in the Registration Statement (as defined below) pursuant to and in accordance with the Rights Agreement, dated January 31, 1996 (as amended, the “Rights Agreement”), between the Company and Wells Fargo Bank, N.A., as rights agent, and any reference herein to the “Initial Securities”, the “Option Securities” and the “Securities” shall also include the Rights.

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

The Company has prepared and filed with the Securities and Exchange Commission (the “Commission”) an automatic shelf registration statement on Form S-3 (File No. 333-155884) covering the public offering and sale of certain securities, including the Securities, under the Securities Act of 1933, as amended (the “1933 Act”), and the rules and regulations promulgated thereunder (the “1933 Act Regulations”), which automatic shelf registration statement became effective under Rule 462(e) under the 1933 Act Regulations (“Rule 462(e)"). Such registration statement, as of any time, means such registration statement as amended by any post-effective amendments thereto to such time, including the exhibits and any schedules thereto at such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B under the 1933 Act Regulations (“Rule 430B”), and is referred to herein as the “Registration Statement;” provided, however, that the “Registration Statement” without reference to a time means such registration statement as amended by any post-effective amendments thereto as of the time of the first contract of sale for the Securities, which time shall be considered the “new effective date” of such registration statement with respect to the Securities within the meaning of paragraph (f)(2) of Rule 430B, including the exhibits and schedules thereto as of such time, the documents incorporated or deemed incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to the Rule 430B. Each preliminary prospectus used in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as a “preliminary prospectus.” Promptly after execution and delivery of this Agreement, the Company will prepare and file a final prospectus relating to the Securities in accordance with the provisions of Rule 424(b) under the 1933 Act Regulations (“Rule 424(b)"). The final prospectus, in the form first furnished or made available to the Underwriters for use in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as the “Prospectus.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”) or its Interactive Data Electronic Applications system (“IDEA”).

As used in this Agreement:

“Applicable Time” means 7:00 A.M., New York City time, on July 23, 2010 or such other time as agreed by the Company and the Representatives.

“General Disclosure Package” means any Issuer General Use Free Writing Prospectuses issued at or prior to the Applicable Time, the preliminary prospectus (including any documents incorporated therein by reference) that is included in the Registration Statement as of the Applicable Time and the information included on Schedule B-1 hereto, all considered together.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“Rule 433”), including without limitation any “free writing prospectus” (as defined in Rule 405 of the 1933 Act Regulations (“Rule 405”)) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a “road show 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 Securities 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).

"Issuer General Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a "bona fide electronic road show," as defined in Rule 433), as evidenced by its being specified in Schedule B-2 hereto.

"Issuer Limited Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" (or other references of like import) in the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include all such financial statements and schedules and other information incorporated or deemed incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, as of the Applicable Time; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "1934 Act"), incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, at or after the Applicable Time.

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company.* The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Underwriter, as follows:

(i) Registration Statement and Prospectuses. The Company meets the requirements for use of Form S-3 under the 1933 Act. The Registration Statement is an "automatic shelf registration statement" (as defined in Rule 405) and the Securities have been and remain eligible for registration by the Company on such automatic shelf registration statement. Each of the Registration Statement and any post-effective amendment thereto has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 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 Company's knowledge, contemplated. 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 of its effectiveness and at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) under the 1933 Act Regulations, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus (including the prospectus filed as part of the Registration Statement as originally filed or as part of any amendment thereto), at the time it was filed, complied in all material respects with the 1933 Act Regulations and each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically

transmitted copies thereof filed with the Commission pursuant to EDGAR or IDEA, except to the extent permitted by Regulation S-T.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the “1934 Act Regulations”).

(ii) Accurate Disclosure. Neither the Registration Statement nor any amendment thereto, at its effective time, at the Closing Time or at any Date of Delivery, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will 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. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Time or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will 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 General Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the first paragraph under the heading “Underwriting—Commissions and Discounts,” the information in the second, third and fourth paragraphs under the heading “Underwriting—Price Stabilization, Short Positions”, the information under the heading “Underwriting—Electronic Offer, Sale and Distribution of Shares” and the information under the heading “Underwriting—Passive Market Making” 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, including any document incorporated by reference therein, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. Any offer that is a written communication relating to the Securities made prior to the initial filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 under the 1933 Act Regulations (“Rule 163”) and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

(iv) Well-Known Seasoned Issuer. (A) At the original effectiveness of the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of

complying with Section 10(a)(3) of the 1933 Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act or form of prospectus), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the 1933 Act Regulations) made any offer relating to the Securities in reliance on the exemption of Rule 163, and (D) as of the Applicable Time, the Company was and is a “well-known seasoned issuer” (as defined in Rule 405).

(v) Company Not 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 1933 Act Regulations) of the Securities 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.

(vi) Independent Accountants. Ernst & Young LLP, the accountants who certified the financial statements and supporting schedules included in the Registration Statement, are independent public accountants with respect to the Company as required by the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations and the Public Company Accounting Oversight Board.

(vii) Financial Statements; Non-GAAP Financial Measures. The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly the consolidated financial position of the Company and its consolidated subsidiaries at the dates indicated and the consolidated results of operations, stockholders’ equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; except as stated therein, said financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods involved. 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, if any, included in the Registration Statement, the General Disclosure Package 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. The pro forma financial statements and the related notes thereto, if any, included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly the information shown therein, have been prepared in accordance with the Commission’s rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. Except as included or incorporated by reference therein, no historical or pro forma financial statements or supporting schedules are required to be included or incorporated by reference in the Registration Statement, the General Disclosure Package or the Prospectus under the 1933 Act or the 1933 Act Regulations. All disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus, or incorporated by reference therein, regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the 1934 Act and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable.

(viii) No Material Adverse Change in Business. Except as otherwise stated therein, since the respective dates as of which information is given in the Registration Statement, the

General Disclosure Package or the Prospectus, (A) there has been no material adverse change in the condition, financial or otherwise, or in the results of operations, 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 (a “Material Adverse Effect”), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise, and (C) except for regular quarterly dividends on the Common Stock in amounts per share that are consistent with past practice, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(ix) Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in the State of Texas and in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(x) Good Standing of Subsidiaries. Each “significant subsidiary” of the Company (as such term is defined in Rule 1-02 of Regulation S-X) (each, a “Subsidiary” and, collectively, the “Subsidiaries”) has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not result in a Material Adverse Effect. Except as otherwise disclosed in the General Disclosure Package and the Prospectus, all of the issued and outstanding capital stock or other ownership interests of each Subsidiary has been duly authorized and validly issued, is fully paid and non assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock or other ownership interests of any Subsidiary was issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary. The only Subsidiaries of the Company are listed on Exhibit 21.1 to the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

(xi) Capitalization. The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the General Disclosure Package and the Prospectus in the column entitled “Actual” under the caption “Capitalization” (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the General Disclosure Package and the Prospectus or pursuant to the exercise of convertible securities or options referred to in the General Disclosure Package and the Prospectus). The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. None of the outstanding shares of capital stock of the Company was issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(xii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xiii) Authorization and Description of Securities. The Securities 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 forth herein, will be validly issued and fully paid and non assessable; and the issuance of the Securities is not subject to the preemptive or other similar rights of any securityholder of the Company. The Common Stock conforms in all material respects to all statements relating thereto contained in the General Disclosure Package and the Prospectus and such description conforms in all material respects to the rights set forth in the instruments defining the same. No holder of Securities will be subject to personal liability by reason of being such a holder. The Rights related to the Common Stock have been duly and validly authorized for issuance by the Company in accordance with the Rights Agreement and conform in all material respects to all statements relating thereto contained in the General Disclosure Package and the Prospectus and such description conforms in all material respects to the rights set forth in the Rights Agreement.

(xiv) Registration Rights. There are no persons with registration rights or other similar rights to have any securities registered for sale pursuant to the Registration Statement or otherwise registered for sale by the Company under the 1933 Act, other than those rights that have been disclosed in the General Disclosure Package and the Prospectus and have been waived.

(xv) Absence of Violations, Defaults and Conflicts. Neither the Company nor any of its subsidiaries is (A) in violation of its charter, by-laws or similar organizational document, (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any subsidiary is subject (collectively, “Agreements and Instruments”), except for such defaults that would not, singly or in the aggregate, result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, assets or operations (each, a “Governmental Entity”), except for such violations that would not, singly or in the aggregate, result in a Material Adverse Effect. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the General Disclosure Package and the Prospectus (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described therein under the caption “Use of Proceeds”) and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not, singly or in the aggregate, result in a Material Adverse Effect), nor will such action result in any violation of (i) the provisions of the charter, by-laws or similar organizational document of the Company or any of its subsidiaries or (ii) any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity, except in the case of clause (ii) herein, for such violations that would not, singly or in the aggregate, result in a Material Adverse Effect. As used herein, a “Repayment Event” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the

repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(xvi) 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 would result in a Material Adverse Effect.

(xvii) Absence of Proceedings. Except as disclosed in the General Disclosure Package and the Prospectus, there is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, where (A) there is a reasonable possibility that such action, suit, proceeding, inquiry or investigation might be determined adversely to the Company or such subsidiary and (B) any such action, suit, proceeding, inquiry or investigation, if so determined adversely, would, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect or adversely affect the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder.

(xviii) Accuracy of Exhibits. There are no contracts or documents which are required by the 1933 Act or the 1933 Act Regulations to be described in the Registration Statement or to be filed as exhibits thereto which have not been so described and filed as required.

(xix) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of the New York Stock Exchange, the NASDAQ Stock Market LLC or the Chicago Stock Exchange, state securities laws or the rules of Financial Industry Regulatory Authority, Inc. ("FINRA").

(xx) Possession of Licenses and Permits. The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, "Governmental Licenses") issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect. The Company and its subsidiaries are in compliance with the terms and conditions of all Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(xxi) Title to Property. The Company and its subsidiaries have valid, legal and defensible title to all of their interests in oil and gas properties and to all other real and personal property owned by them and any other real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except (A) such as are described in the General Disclosure Package

and the Prospectus, (B) liens and encumbrances under operating agreements, unitization and pooling agreements, production sales contracts, farm-out agreements and other oil and gas exploration and production agreements, in each case that secure payment of amounts not yet due and payable for the performance of other inchoate obligations and are of a scope and nature customary in connection with similar drilling and producing operations or (C) those that do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries.

(xxii) Possession of Intellectual Property. The Company and its subsidiaries own or possess, or can acquire on reasonable terms, adequate trademarks, service marks and trade names (collectively, "Intellectual Property") necessary to carry on the business now operated by them, except as described in the General Disclosure Package and the Prospectus or where the failure to own or possess the same would not, singly or in the aggregate, result in a Material Adverse Effect, and neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in a Material Adverse Effect.

(xxiii) Environmental Laws. Except as described in the General Disclosure Package and the Prospectus or would not, singly or in the aggregate, result in a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or the violation of any Environmental Laws.

(xxiv) Accounting Controls and Disclosure Controls. The Company maintains effective internal control over financial reporting (as defined under Rule 13a-15 and 15d-15 under the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and

(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. Except as described in the General Disclosure Package and the 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 Company maintains an effective system of disclosure controls and procedures (as defined in Rule 13a-15 and Rule 15d-15 under the 1934 Act Regulations) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, and is accumulated and communicated to the Company's management, including its principal executive officer or officers and principal financial officer or officers, as appropriate, to allow timely decisions regarding disclosure.

(xxv) Compliance with the Sarbanes-Oxley Act. The Company and its directors and officers, in their capacities as such, are in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxvi) Payment of Taxes. The Company and its subsidiaries have filed all federal, state, local and foreign income and franchise tax returns required by law to be filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except for any taxes, assessments, fines or penalties as may be being contested in good faith and by appropriate proceedings or where the failure to do so would not reasonably be expected to have a Material Adverse Effect. The Company has made appropriate provisions in the financial statements included in the General Disclosure Package and the Prospectus in respect of all federal, state and foreign income and franchise taxes for all current or prior periods as to which the tax liability of the Company or any of its consolidated subsidiaries has not been finally determined except to the extent it would not have a Material Adverse Effect

(xxvii) Insurance. The Company and its subsidiaries carry or are entitled to the benefits of insurance, with, to the knowledge of the Company, financially sound and reputable insurers, in such amounts and covering such risks as is, in the opinion of the Company, appropriate for the size and business of the Company and its subsidiaries, and all such insurance is in full force and effect. The Company has no reason to believe that it or any of its subsidiaries will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect. Neither of the Company nor any of its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(xxviii) Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the General Disclosure Package and the Prospectus will not be required, to register as an "investment company" under the Investment Company Act of 1940, as amended (the "1940 Act").

(xxix) Absence of Manipulation. Neither the Company nor, to the knowledge of the Company, any affiliate of the Company has taken, nor will the Company or any affiliate take,

directly or indirectly, any action which is designed, or would be expected, to cause or result in, or which has constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xxx) Foreign Corrupt Practices Act. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxi) Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity that, in each case, are applicable to the business and operations of the Company (collectively, the “Money Laundering Laws”); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxii) OFAC. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any of its subsidiaries, joint venture partners or other person, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxxiii) Oil and Gas Reserve Estimates. The information underlying the estimates of the Company’s oil and gas reserves as described in the General Disclosure Package and the Prospectus is complete and accurate in all material respects (or, with regard to any information underlying the estimates prepared by any petroleum engineers retained by the seller of such oil and gas reserves, is, to the best knowledge of the Company after reasonable investigation, complete and accurate in all material respects); other than production of the Company’s reserves in the ordinary course of business and intervening product price fluctuations described in the General Disclosure Package and the Prospectus, the Company is not aware of any facts or circumstances that would result in a material adverse change in such reserves or the present value of future net cash flows therefrom as described in the General Disclosure Package and the Prospectus. Estimates of such reserves and present values comply in all material respects with the applicable requirements of Regulation S-X and Items 1201-1208 of Regulation S-K under the 1933 Act.

(xxxiv) Independent Petroleum Engineers. Ryder Scott Company, the petroleum engineers who have consented to being named as having reviewed certain reserve data included in the General Disclosure Package and the Prospectus, are independent engineers with respect to the Company and its subsidiaries.

(xxxv) Statistical and Market-Related Data. Any statistical and market-related data included in the General Disclosure Package or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(xxxvi) Mariner Merger. Except as otherwise disclosed in the General Disclosure Package and the Prospectus, subject to the approval of stockholders of Mariner Energy, Inc. ("Mariner"), nothing has come to the Company's attention that would cause it to reasonably believe that the merger of Mariner with and into a wholly owned subsidiary of the Company (the "Mariner Merger") pursuant to that Agreement and Plan of Merger, dated April 14, 2010 (the "Mariner Merger Agreement"), among the Company, a wholly owned subsidiary of the Company and Mariner, will not be consummated substantially in accordance with the terms of the Mariner Merger Agreement.

(xxxvii) BP Asset Acquisitions. Except as otherwise disclosed in the General Disclosure Package and the Prospectus, nothing has come to the Company's attention that would cause it to reasonably believe that those acquisitions of certain assets pursuant to the (i) Purchase and Sale Agreement by and between BP America Production Company and ZPZ Delaware I LLC, (ii) Partnership Interest and Share Purchase and Sale Agreement by and between BP Canada Energy and Apache Canada Ltd. and (iii) Purchase and Sale Agreement by and between BP Egypt Company, BP Exploration (Delta) Limited and ZPZ Egypt Corporation LDC (collectively, the "PSAs"), each dated as of July 20, 2010, will not be consummated substantially in accordance with the terms of the PSAs.

(c) Officers' Certificates. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) Initial Securities. 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 each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at the price per share set forth in Schedule A, that number of Initial Securities set forth in Schedule A opposite the name of the Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject, in each case, to such adjustments among the Underwriters as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(b) Option Securities. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional 3,450,000 shares of Common Stock at the price per share set forth in Schedule A, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities. The option hereby granted will expire 30 days after the date hereof and may be

exercised in whole or in part from time to time only for the purpose of covering overallotments made in connection with the offering and distribution of the Initial Securities upon notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the total number of Initial Securities, subject, in each case, to such adjustments as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(c) Delivery of and Payment for the Securities. Payment of the purchase price for, and delivery of, the Initial Securities shall be made at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, or at such other place as shall be agreed upon by the Representatives and the Company, at 9:00 A.M. (New York City time) on July 28, 2010 (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of, such Option Securities shall be made at the above-mentioned offices of Davis Polk & Wardwell LLP, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from the Representatives to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company against delivery to the Representatives for the respective accounts of the Underwriters of the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. Merrill Lynch, Citigroup, Goldman Sachs and JP Morgan, each individually and not as representatives of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder. The Company shall deliver the Firm Securities and the Option Securities, if any, through the facilities of The Depository Trust Company ("DTC") unless the Representatives shall otherwise instruct.

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

(a) *Compliance with Securities Regulations and Commission Requests*. The Company will prepare the Prospectus in a form approved by the Representatives and file such Prospectus pursuant to Rule 424(b) under the 1933 Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement. The Company will make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the last Date of Delivery except as provided herein. The Company will advise the Representatives, promptly after it receives notice thereof, of the time when any amendment or supplement to the Registration Statement or the Prospectus has been filed and to furnish the Representatives with copies thereof. The Company will

advise the Representatives, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding or examination for any such purpose or of any request by the Commission for the amending or supplementing of the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus or for additional information. In the event of the issuance of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus or suspending any such qualification, the Company will use all reasonable efforts to obtain withdrawal of such order promptly. The Company will advise the Representatives, promptly after it receives notice thereof, if it becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities.

(b) *Amendments and Supplements.* The Company will file promptly with the Commission any amendment or supplement to the Registration Statement or the Prospectus that may, in the judgment of the Company or the Representatives, be required by the 1933 Act or requested by the Commission. If at any time when a prospectus is required by the 1933 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, to amend or supplement the Registration Statement, General Disclosure Package or Prospectus, as applicable, in order that the Registration Statement, General Disclosure Package or Prospectus, as applicable, 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, the Company shall promptly notify the Representatives and prepare any amendment or supplement necessary to correct such misstatement or omission. Prior to filing with the Commission any amendment or supplement to the Registration Statement or the Prospectus, the Company will furnish a copy thereof to the Representatives and counsel for the Underwriters and obtain the consent of the Representatives to the filing, which consent shall be provided promptly and shall not be unreasonably withheld.

(c) *Delivery of Registration Statements.* The Company has furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, signed 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 Representatives, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of 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 each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, 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 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter 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 use its best efforts, in cooperation 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 Representatives may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent 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 1934 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 1933 Act.

(g) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the General Disclosure Package and the Prospectus under “Use of Proceeds.”

(h) *Listing.* The Company will use all reasonable efforts to effect and maintain the listing of the Securities on the New York Stock Exchange, the Nasdaq Global Market and the Chicago Stock Exchange.

(i) *Restriction on Sale of Securities.* During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, (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 shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 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, 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. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, (B) any shares of 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 and referred to in the General Disclosure Package and the Prospectus, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company referred to in the General Disclosure Package and the Prospectus, (D) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to in the General Disclosure Package and the Prospectus, (E) the shares of Common Stock issuable in connection with the Mariner Merger, provided that the Mariner Merger is consummated substantially in accordance with the terms of the Mariner Merger Agreement and the disclosure related to the Mariner Merger in the Company’s Registration Statement on Form S-4 filed with the Commission on May 19, 2010, as amended on June 29, 2010 or (G) the issuance and sale of up to 25,300,000 Depositary Shares, each representing a 1/20th interest in a share of 6% Mandatory Convertible Preferred Stock, Series D (“Series D Preferred”), pursuant to that Underwriting Agreement dated the date hereof among the Company, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Goldman, Sachs & Co. and J.P. Morgan Securities Inc., as the representatives of the several underwriters named therein, or any shares of Common Stock issued pursuant to a conversion of the Series D Preferred pursuant to its terms. Notwithstanding the foregoing, if (1) during the last 17 days of the 90-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs or (2) prior to the expiration of the 90-day restricted period, the Company announces that it will issue an earnings release or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the 90-day restricted period, the restrictions imposed in this clause (i) shall

continue to apply until the expiration of the 18-day period beginning on the date of the issuance of the earnings release or the occurrence of the material news or material event, unless the Representatives waive, in writing, such extension.

(j) *Reporting Requirements.* The Company, 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 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and 1934Act Regulations. Additionally, the Company shall report the use of proceeds from the issuance of the Shares as may be required under Rule 463 under the 1933 Act.

(k) *Issuer Free Writing Prospectuses.* The Company agrees that, unless it obtains the prior written consent of the Representatives, 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 Representatives will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule C-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 Representatives. 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 Representatives 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 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 Representatives 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.

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, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and 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, (iii) the preparation, issuance and delivery of the Securities to the Underwriters, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company’s counsel, accountants, independent petroleum engineers and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees, (vi) the fees and expenses of any transfer agent or registrar for the Securities, (vii) the costs and expenses of the Company relating to investor presentations on any “road show” undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of aircraft and other transportation chartered in connection with the road show, (viii) the fees and expenses incurred in connection with the listing of the Securities on the New York Stock Exchange, the Nasdaq Global Market and the Chicago Stock Exchange

and (ix) the costs and expenses (including, without limitation, any damages or other amounts payable in connection with legal or contractual liability) associated with the reforming of any contracts for sale of the Securities made by the Underwriters caused by a breach of the representation contained in the third sentence of Section 1(a)(ii); *provided that*, except as provided in this Section 4, the Underwriters shall pay their own costs and expenses, including the fees and expenses of their counsel, any transfer taxes on the Securities which they may sell and the expenses of advertising any offering of the Securities made by the Underwriters.

(b) *Termination of Agreement.* If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5, Section 9 (other than Section 9(a)(ii), (iv), (v) or (vi)), Section 10 or Section 11 hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters; provided that if this Agreement is terminated pursuant to Section 10 hereof, such reimbursement of out-of-pocket expenses shall only be made by the Company to the non-defaulting Underwriters.

SECTION 5. Conditions of Underwriters' Obligations. The obligations of the several 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 or any of its subsidiaries 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.* The 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 shall have been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus shall have been issued and no proceedings for any of those purposes shall have been instituted or be pending or, to the Company's knowledge, contemplated; and the Company shall have complied with each request (if any) from the Commission for additional information. The Company shall have paid the required Commission filing fees relating to the Securities within the time period required by Rule 456(1)(i) under the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the 1933 Act Regulations and, if applicable, shall have updated the "Calculation of Registration Fee" table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b).

(b) *Opinion of Counsel for Company.* At the Closing Time, the Representatives shall have received the favorable opinion, dated the Closing Time, of Bracewell & Giuliani LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, to the effect set forth in Exhibit A hereto.

(c) *Opinion of Counsel for Underwriters.* At Closing Time, the Representatives shall have received the favorable opinion, dated the Closing Time, of Davis Polk & Wardwell LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, with respect to such matters as the Representatives may require. 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 Representatives. 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 General Disclosure Package or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the results of operations, 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 Representatives shall have received a certificate of the Chief Executive Officer or the President of the Company and of the chief financial or chief accounting officer of the Company (which may be the same person), dated the Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, (iv) no stop order suspending the effectiveness of the Registration Statement under the 1933 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, contemplated, and (v) there has been no decrease in or withdrawal of the rating of any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the 1933 Act) nor has any notice been given of any intended or potential decrease in or withdrawal of any such rating.

(e) *Accountant's Comfort Letters.* At the time of the execution of this Agreement, the Representatives shall have received from Ernst & Young LLP, independent registered public accountants for the Company, a letter, dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other 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 the Registration Statement, the General Disclosure Package and the Prospectus.

(f) *Bring-down Comfort Letters.* At the Closing Time, the Representatives shall have received from Ernst & Young LLP, independent registered public accountants for the Company, a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) 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) *Engineers' Letters.* At the time of execution of this Agreement, the Representatives shall have received a letter, dated such date, in form and substance satisfactory to the Representative, together with signed or reproduced copies of such letter for each of the other Underwriters, from Ryder Scott Company Petroleum Engineers with respect to such matters as the Representatives may require.

(h) *Approval of Listing.* At the Closing Time, the Securities shall have been approved for listing on the New York Stock Exchange, the Nasdaq Global Market and the Chicago Stock Exchange, subject only to official notice of issuance.

(i) *Assurance Certificate.* At the time of execution of this Agreement, the Representatives shall have received a certificate containing certain assurances set forth therein from the Principal Financial Officer of the Company in form and substance satisfactory to the Underwriters.

(j) *Bring-down Assurance Certificate.* At the Closing Time, the Representatives shall have received a certificate containing certain assurances set forth therein from the Principal Financial Officer of the Company in form and substance satisfactory to the Representatives reaffirming the statements they made in the letter furnished pursuant to subsection (i) of this Section as of the date hereof.

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

(l) Maintenance of Rating. Since the execution of this Agreement, there shall not have been any decrease in or withdrawal of the rating of any securities of the Company or any of its subsidiaries by any “nationally recognized statistical rating organization” (as defined for purposes of Rule 436(g) under the 1933 Act) or any notice given of any intended or potential decrease in or withdrawal of any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(m) Conditions to Purchase of Option Securities. In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company or any of its subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers’ Certificate. A certificate, dated such Date of Delivery, of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company (which may be the same person) confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) Opinion of Counsel for Company. If requested by the Representatives, the favorable opinion of Bracewell & Giuliani LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iii) Opinion of Counsel for Underwriters. If requested by the Representatives, the favorable opinion of Davis Polk & Wardwell LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(iv) Bring-down Comfort Letter. If requested by the Representatives, a letter from Ernst & Young LLP, independent registered public accountants for the Company, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(f) hereof, except that the “specified date” in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(v) Bring-down Assurance Certificate. If requested by the Representatives, a certificate, dated such Date of Delivery, containing certain assurances set forth therein from the Principal Financial Officer of the Company in form and substance satisfactory to the Representatives.

(n) Additional Documents. At the Closing Time and at each Date of Delivery (if any) 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 Securities 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.

(o) *Termination of Agreement.* If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the Representatives by notice to the Company at any time at or prior to Closing Time or such Date of Delivery, as the case may be, 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 and 16 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, its affiliates (as such term is defined in Rule 501(b) under the 1933 Act (each, an “Affiliate”)), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 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 any information deemed to be a part thereof pursuant to Rule 430B, 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 or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom 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 (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representatives), 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 agreement 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 any information deemed to be a part thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, 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 1933 Act or Section 20 of the 1934 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 any information deemed to be a part thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) *Actions against Parties; Notification.* Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representatives, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

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 Securities 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 Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

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 (even if the Underwriters were treated as one entity for such purpose) 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, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions 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 1933 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 an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates 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 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

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 or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors, or any person controlling the Company and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) *Termination.* The Representatives 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 Representatives, since the time of execution of this Agreement or since the respective dates as of which information is given in the General Disclosure Package or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the results of operations, 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 Representatives, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the New York Stock Exchange, the Nasdaq Global Market or the Chicago Stock Exchange, or (iv) if trading generally on the New York Stock Exchange, the Nasdaq Global Market or the Chicago Stock Exchange 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 with respect to Clearstream or Euroclear systems in Europe, or (vi) if a banking moratorium has been declared by either Federal, New York or Texas 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 and 16 shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either (i) the Representatives or (ii) the Company shall have the right to postpone the Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Default by the Company. If the Company shall fail at the Closing Time or a Date of Delivery, as the case may be, to sell the number of Securities that it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any Underwriter; provided, however, that the provisions of Sections 1, 4, 6, 7, 8, 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 each of (i) Merrill Lynch, Pierce, Fenner & Smith Incorporated at One Bryant Park, New York, New York 10036, Attention: Syndicate Department, with a copy to ECM Legal, (ii) Citigroup Global Markets Inc. General Counsel (fax no.: 212-816-7912) and confirmed to the General Counsel, Citigroup Global Markets Inc., at 388 Greenwich Street, New York, New York 10013, Attention: General Counsel, (iii) Goldman, Sachs & Co. at 200 West Street, New York, New York 10282, Attention: Registration Department and (iv) J.P. Morgan Securities Inc. at 383 Madison Avenue, New York, New York 10179, (Fax: (212) 622-8358); Attention: Equity Syndicate Desk. Notices to the Company shall be directed to it at Apache Corporation, 2000 Post Oak Boulevard, Suite 100, Houston, Texas 77056-4400, Attention: Matthew W. Dundrea, Vice President and Treasurer, with a copy to the attention of P. Anthony Lannie, Executive Vice President and General Counsel, and a copy to: Bracewell & Giuliani LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002, Attention: John Brantley.

SECTION 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the initial public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, any of its subsidiaries, or its respective stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any of its subsidiaries on other matters) and no Underwriter has any obligation to the Company with respect to the offering of the Securities 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 Securities and the Company has consulted its own respective legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

SECTION 14. Parties. This Agreement shall 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 any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 15. Patriot Act. The Company acknowledges and agrees that in accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

SECTION 16. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, 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 17. 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 18. 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 the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan, unless any such Federal court determines that it lacks jurisdiction over a Related Proceeding in which case such Related Proceeding shall be instituted in the courts of the State of New York, in each case 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 19. 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 20. Partial Unenforceability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

SECTION 21. 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. Facsimile copies of signatures shall constitute original signatures for all purposes of this Agreement and any enforcement hereof.

SECTION 22. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

[Signature Pages Follow]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,

APACHE CORPORATION

By: /s/ Matthew W. Dundrea

Name: Matthew W. Dundrea

Title: Vice President & Treasurer

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

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ David McShane
Name: David McShane
Title: Managing Director

CITIGROUP GLOBAL MARKETS INC.

By: /s/ Michael V. Cottone
Name: Michael Cottone
Title: Vice President

GOLDMAN, SACHS & CO.

By: /s/ John Daly
Goldman, Sachs & Co.

J.P. MORGAN SECURITIES INC.

By: /s/ Yaw Asamoah-Duodu
Name: Yaw Asamoah-Duodu
Title: Managing Director

For themselves and as Representatives of the other
Underwriters named in Schedule A hereto.

SCHEDULE A

The initial public offering price per share for the Securities shall be \$88.00.

The purchase price per share for the Securities to be paid by the several Underwriters shall be \$85.36, being an amount equal to the initial public offering price set forth above less \$2.64 per share, subject to adjustment in accordance with Section 2(b) for dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities.

Name of Underwriter	Number of Initial Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	5,750,000
Citigroup Global Markets Inc.	5,750,000
Goldman, Sachs & Co.	5,750,000
J.P. Morgan Securities Inc.	5,750,000
Total	23,000,000

SCHEDULE B-1

Pricing Terms

1. The Company is selling 23,000,000 shares of Common Stock.
2. The Company has granted an option to the Underwriters, severally and not jointly, to purchase up to an additional 3,450,000 shares of Common Stock.
3. The initial public offering price per share for the Securities shall be \$88.00.

Sch B -1

SCHEDULE B-2

Free Writing Prospectus

[Follows]

Sch B -1

SCHEDULE C

List of Persons and Entities Subject to Lock-up

G. Steven Farris	Director, Chairman and Chief Executive Officer
Roger B. Plank	President
John A. Crum	Co-Chief Operating Officer and President — North America
Rodney J. Eichler	Co-Chief Operating Officer and President — International
Michael S. Bahorich	Executive Vice President and Technology Officer
Jon A. Jeppesen	Executive Vice President
P. Anthony Lannie	Executive Vice President and General Counsel
W. Kregg Olson	Executive Vice President
Sarah B. Teslik	Senior Vice President
John R. Bedingfield	Vice President — Worldwide Exploration and New Ventures
David A. Carmony	Vice President — Environmental, Health and Safety
Thomas P. Chambers	Vice President — Planning and Investor Relations
Matthew W. Dundrea	Vice President and Treasurer
Robert J. Dye	Vice President — Corporate Services
David L. French	Vice President — Business Development
Margery M. Harris	Vice President — Human Resources
Rebecca A. Hoyt	Vice President and Controller
Janine J. McArdle	Vice President — Oil and Gas Marketing
Aaron S.G. Merrick	Vice President — Information Technology
Urban F. O'Brien	Vice President — Government Affairs
Jon W. Sauer	Vice President — Tax
Cheri L. Peper	Corporate Secretary
Frederick M. Bohen	Director
Randolph M. Ferlic	Director
Eugene C. Fiedorek	Director
A. D. Frazier, Jr.	Director
Patricia Albjerg Graham	Director
John A. Kocur	Director
George D. Lawrence	Director
F. H. Merelli	Director
Rodman D. Patton	Director
Charles J. Pitman	Director

FORM OF OPINION OF COMPANY'S COUNSEL

1. The Company is validly existing and in good standing as a corporation under the laws of the State of Delaware, has full corporate power and authority to own, lease and operate its properties and to conduct its business as such business is described in the Prospectus and to enter into its obligations under the Agreement and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect;
2. Each U.S. Subsidiary is validly existing and in good standing under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect; and except as otherwise disclosed in the Registration Statement, all of the issued and outstanding capital stock of each U.S. Subsidiary, to such counsel's knowledge after due inquiry, is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity;
3. The Securities delivered on the date hereof (i) have been duly authorized for issuance and sale to the Underwriters pursuant to the Agreement and, when issued and delivered against payment of the consideration therefor pursuant to the Underwriting Agreement, will be validly issued, fully paid and nonassessable, and no holder of the Securities is or will be subject to personal liability solely by reason of being such a holder, (ii) conform as to legal matters in all material respects to the description thereof under the caption "Description of Apache Corporation Capital Stock" in the Prospectus and (iii) are approved for listing, subject to official notice of issuance, on the New York Stock Exchange, the NASDAQ Global Select Market and the Chicago Stock Exchange; and to such counsel's knowledge after due inquiry, the holders of Common Stock have no pre-emptive rights with respect to the Securities delivered on the date hereof;
4. To such counsel's knowledge after due inquiry, except as disclosed in the Prospectus, no person or entity has the right to require the registration under the 1933 Act of Common Stock or other securities of the Company, which right has not been waived; and to such counsel's knowledge after due inquiry, except as described in the Prospectus or provided in various employee or director compensation plans, there are no agreements to issue, and there are no outstanding options, warrants or other rights calling for the issuance of, any Common Stock to any person, nor any security or other instrument, that by its terms is convertible into, exercisable for or exchangeable for Common Stock;
5. The Rights under the Rights Agreement, dated as of January 31, 1996 and as amended to the date hereof, between the Company and Wells Fargo Bank, N.A., to which holders of the Securities will be entitled have been duly authorized and validly issued;

6. The Registration Statement, including any Rule 462(b) Registration Statement, has become effective under the 1933 Act; any filings of the Preliminary Prospectus Supplement or the Prospectus Supplement required prior to the date hereof pursuant to Rule 424(b) under the 1933 Act have been made in the manner and within the time period required by Rule 424(b); any required filing of each Issuer Free Writing Prospectus pursuant to Rule 433 has been made in the manner required by Rule 433(d); and, to such counsel's knowledge after due inquiry, no stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement has been issued under the 1933 Act and no proceedings for that purpose have been instituted or threatened by the Commission;
7. The Registration Statement and the Prospectus, excluding in each case the documents incorporated by reference therein, as of their respective effective or issue dates (other than the financial statements and notes thereto and supporting schedules and other financial or accounting data and information pertaining to natural resource reserves included therein or omitted therefrom and the Trustee's Statement of Eligibility on Form T-1, as to which such counsel need express no opinion) appeared on their face to comply as to form in all material respects with the requirements of the 1933 Act and the rules and regulations promulgated by the Commission thereunder;
8. The Agreement has been duly authorized, executed and delivered by the Company;
9. The execution and delivery by the Company of the Agreement, the consummation of the transactions therein contemplated and the use of the net proceeds from the sale of the Securities in the manner described in the Prospectus under the caption "Use of Proceeds" do not (i) violate or constitute a default or Repayment Event under (or constitute an event that, with the giving of notice or lapse of time or both, would constitute such a default or Repayment Event under) the terms or provisions of any indenture, mortgage, deed of trust or loan agreement or other agreement or instrument filed or incorporated by reference as an exhibit to the Company's most recently filed annual report on Form 10-K or to any Form 10-Q or Form 8-K of the Company filed since the filing of such Annual Report on Form 10-K, (ii) violate any provision of the certificate of incorporation or bylaws of the Company, (iii) violate any existing obligation of the Company under any existing court or administrative order, judgment or decree of which such counsel has knowledge after due inquiry, or (iv) violate any applicable provisions of the federal laws of the United States (based on the limitations set forth below), the laws of the State of Texas, the laws of the State of New York or the General Corporation Law of the State of Delaware;
10. No consent, approval, authorization or order of, or filing with, any federal, Delaware, New York or Texas court or governmental agency or body having jurisdiction over the Company is required to be made or obtained by the Company under federal or Texas law, the General Corporation Law of the State of Delaware or the laws of the State of New York for the consummation by the Company of the transactions contemplated by the Agreement in connection with the issue and sale of the Securities by the Company and the execution and delivery of the Agreement by the Company, except (i) as may be required under state securities or "Blue Sky" laws in connection with the purchase and distribution of the Securities by the Underwriters, and (ii) such as the failure to obtain or make would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect;

11. To such counsel's knowledge after due inquiry, and other than as set forth in the Prospectus, there is no legal or governmental proceeding pending or threatened against the Company which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;
12. Subject to the qualifications set forth therein, the discussion set forth in the Prospectus under the caption "Certain U.S. Federal Tax Consequences to Non-U.S. Holders" is a summary of the United States federal income tax matters described therein that is accurate in all material respects;
13. The documents incorporated by reference in the Registration Statement and the Prospectus (other than the financial statements and notes thereto, schedules and related data and other financial or accounting data and information pertaining to natural resource reserves included therein or omitted therefrom, as to which such counsel need express no opinion), when they were filed with the Commission, appeared on their face to comply as to form in all material respects with the requirements of the particular form under the 1934 Act and the rules and regulations promulgated by the Commission thereunder; and, to such counsel's knowledge after due inquiry, there are no documents that are required to be filed as exhibits to any of such documents incorporated by reference that are not so filed; and
14. The Company is not, and upon the application of the net proceeds from the issuance and sale of the Securities in the manner described under the caption "Use of Proceeds" in the Prospectus will not be, subject to regulation as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

Such counsel may state that such opinion is based on and is limited to the relevant federal law of the United States of America, the law of the State of Texas, the law of the State of New York and the General Corporation Law of the State of Delaware, and that it renders no opinion with respect to the state securities or "Blue Sky" laws of any jurisdiction or the law of any other jurisdiction. Such counsel may note that it is not admitted to the practice of law in the State of Delaware. With respect to paragraph 8, such counsel may state that it renders no opinion with respect to the anti-fraud provisions of the federal securities laws. Also with respect to paragraph 8, such counsel may state that it made no examination of any accounting or financial matters and expresses no opinion with respect thereto.

Such counsel may state that whenever its opinion is based on factual matters that are "of which such counsel has knowledge after due inquiry" or "to such counsel's knowledge after due inquiry," it has, with the Underwriters' concurrence, relied to the extent it deems appropriate on certificates of officers (after the discussion of the contents thereof with such officers) of the Company or certificates of others as to the existence or nonexistence of the factual matters upon which such opinion is predicated. Such counsel shall state that it has no reason to believe, however, that any such certificate is untrue or inaccurate in any material respect.

Such counsel may also state that, because the primary purpose of its engagement was not to establish or confirm factual matters or financial or accounting matters or matters pertaining to natural resource reserves and because of the wholly or partially non-legal character of many of the statements contained in the Registration Statement, the General Disclosure Package and the Prospectus, such counsel is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement, the General Disclosure Package or the Prospectus (except to the extent expressly set forth in clause (ii) of paragraph 3 or in paragraph 12 above), and such counsel has not independently verified the accuracy, completeness or fairness of such statements (except

as aforesaid). Without limiting the foregoing, such counsel may state that it assumes no responsibility for, has not independently verified and has not been asked to comment on the accuracy, completeness or fairness of the financial statements and notes thereto, schedules and related data and other financial or accounting data or information pertaining to natural resource reserves included in the Registration Statement, the General Disclosure Package, the Prospectus or the exhibits to the Registration Statement, and it has not examined the accounting, financial or other records from which such financial statements and notes thereto, schedules and related data and other financial or accounting data or information pertaining to natural resource reserves contained therein were derived. Such counsel may note that, although certain portions of the Registration Statement have been included therein on the authority of “experts” within the meaning of the Securities Act, such counsel are not experts with respect to any portion of the Registration Statement, including, without limitation, such financial statements and notes thereto, schedules and related data and other financial or accounting data or information pertaining to natural resource reserves included therein. Such counsel may note that it did not participate in the preparation of the documents incorporated by reference in the Registration Statement or the Prospectus. However, such counsel shall state that it has participated in conferences with officers and other representatives of the Company, its auditors, and representatives of the Underwriters, including the Underwriters’ counsel, at which the contents of the Registration Statement, the General Disclosure Package and the Prospectus and related matters were discussed, and that based upon such participation and review, and relying as to materiality in part upon the factual statements of officers and other representatives of the Company and upon representatives of the Underwriters, such counsel shall advise the Underwriters that no facts have come to such counsel’s attention that have caused it to believe that the Registration Statement, including any information included in the Prospectus which was omitted from such Registration Statement at the time it became effective but that is deemed to be part of and included in such Registration Statement pursuant to Rule 430B under the 1933 Act, at the effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) under the 1933 Act, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus, as of its date or as of the date hereof, or that the General Disclosure Package at the Applicable Time, contained or contains an untrue statement of a material fact or omitted or omits 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, it being understood that such counsel shall not be asked to comment on, and it may express no belief with respect to, the financial statements and notes thereto, schedules and related data and other financial or accounting data or information pertaining to natural resource reserves or exhibits (including the Form T-1) contained or incorporated by reference in or omitted from the Registration Statement, the General Disclosure Package or the Prospectus, it also being understood that, with respect to statements contained in the General Disclosure Package, any statement contained in any of the constituent documents shall be deemed to be modified or superseded to the extent that any information contained in subsequent constituent documents modifies or replaces such statement.

[FORM OF LOCK-UP AGREEMENT]

_____, 2010

Merrill Lynch, Pierce, Fenner & Smith
Incorporated

One Bryant Park
New York, New York 10036

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Goldman, Sachs & Co.
200 West Street
New York, New York 10282

J.P. Morgan Securities Inc.
383 Madison Avenue
New York, NY 10179

as Representatives of the several Underwriters to be named in the within-mentioned Underwriting Agreement

Re: Proposed Public Offering by Apache Corporation

Dear Sirs:

The undersigned, a stockholder and an officer and/or director of Apache Corporation, a Delaware corporation (the "Company"), understands that Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Citigroup Global Markets Inc. ("Citigroup"), Goldman, Sachs & Co. ("Goldman Sachs") and J.P. Morgan Securities Inc. ("JP Morgan" and together with Merrill Lynch, Citigroup and Goldman Sachs, as representatives of the several underwriters to be named in the within-mentioned Underwriting Agreement, the "Representatives") propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with the Company providing for the public offering (the "Public Offering") of shares (the "Securities") of the Company's common stock, par value \$0.625 per share (the "Common Stock"). In recognition of the benefit that such an offering will confer upon the undersigned as a stockholder and 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 each underwriter to be named in the Underwriting Agreement that, during the period beginning on the date hereof and ending on the date that is 90 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 Representatives, 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 of the Company's Common Stock or any securities convertible into or exchangeable or exercisable for Common Stock, 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 Securities”), or exercise any right with respect to the registration of any of the Lock-up Securities, 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 Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer the Lock-Up Securities without the prior written consent of the Representatives provided that (1) the Representatives receive 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 such transfer shall not involve a disposition for value, (3) such transfers 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, and (4) the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers:

- (i) as a *bona fide* gift or gifts; or
- (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned (for purposes of this lock-up agreement, “immediate family” shall mean any relationship by blood, marriage or adoption, not more remote than first cousin); or
- (iii) as a distribution to limited partners or stockholders of the undersigned; or
- (iv) to the undersigned’s affiliates or to any investment fund or other entity controlled or managed by the undersigned.

Furthermore, the undersigned may sell shares of Common Stock 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 Exchange Commission, or otherwise and (ii) the undersigned does not otherwise voluntarily effect any public filing or report regarding such sales.

Notwithstanding the foregoing, if:

(1) during the last 17 days of the 90-day lock-up period, the Company issues an earnings release or material news or a material event relating to the Company occurs; or

(2) prior to the expiration of the 90-day lock-up period, the Company announces that it will release earnings results or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the 90-day lock-up period,

the restrictions imposed by this lock-up agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless the Representatives waive, in writing, such extension.

The undersigned agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this lock-up agreement during the period from the date of this lock-up agreement to and including the 34th day following the expiration of the initial 90-day lock-up period, it will give notice thereof to the Company and will not consummate such transaction or take any such action unless it has

received written confirmation from the Company that the 90-day lock-up period (as may have been extended pursuant to the previous paragraph) has expired.

It is understood that, if the Company notifies the Representatives that it does not intend to proceed with the Public Offering, if the Underwriting Agreement does not become effective by September 30, 2010 or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities, the undersigned will be released from his or her obligations under this lock-up agreement.

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 Securities except in compliance with the foregoing restrictions.

Very truly yours,

Signature: _____

Print Name: _____

APACHE CORPORATION

22,000,000 Depositary Shares Each Representing a 1/20th Interest in a Share of
6.00% Mandatory Convertible Preferred Stock, Series D

UNDERWRITING AGREEMENT

Dated: July 22, 2010

APACHE CORPORATION

22,000,000 Depositary Shares Each Representing a 1/20th Interest in a Share of
6.00% Mandatory Convertible Preferred stock, Series D

UNDERWRITING AGREEMENT

July 22, 2010

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Goldman, Sachs & Co.
200 West Street
New York, New York 10282

J.P. Morgan Securities Inc.
383 Madison Avenue
New York, New York 10179

as Representatives of the several
Underwriters named in Schedule A hereto

Ladies and Gentlemen:

Apache Corporation, a Delaware corporation (the “Company”) confirms its agreement with Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), Citigroup Global Markets Inc. (“Citigroup”), Goldman, Sachs & Co. (“Goldman Sachs”), J.P. Morgan Securities Inc. (“JP Morgan”) and each of the other Underwriters named in Schedule A hereto (collectively, the “Underwriters,” which term shall also include any underwriter substituted as hereinafter provided in Section 10 hereof), for whom Merrill Lynch, Citigroup, Goldman Sachs and JP Morgan are acting as representatives (in such capacity, the “Representatives”), with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of an aggregate of 22,000,000 depositary shares (the “Depositary Shares”), each representing a 1/20th interest in a share of its 6.00% Mandatory Convertible Preferred Stock, Series D, of the Company (“Series D Preferred Stock”), as set forth in Schedule A hereto and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of 3,300,000 additional Depositary Shares to cover overallocments, if any. The aforesaid 22,000,000 Depositary Shares (the “Initial Securities”) to be purchased by the Underwriters and all or any part of the 3,300,000 Depositary Shares subject to the option described in Section 2(b) hereof (the “Option Securities”) are herein called, collectively, the “Securities.”

The Securities will be issued pursuant to a deposit agreement (the “Deposit Agreement”), to be dated July 28, 2010, among the Company, Wells Fargo Bank, N.A., as depository (the “Depository”), and owners and beneficial owners from time to time of the Securities. Each Security will initially represent the right to receive a 1/20th interest in a share of Series D Preferred Stock pursuant to the Deposit Agreement. The terms of the Series D Preferred Stock will be set forth in a certificate of designations (the “Certificate of Designations”) to be filed by the Company with the Secretary of State of the State of Delaware. The Series D Preferred Stock will be convertible into a variable number of shares (the “Conversion Common Shares”) of common stock, par value \$0.625 per share, of the Company (the “Common Stock”).

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

The Company has prepared and filed with the Securities and Exchange Commission (the “Commission”) an automatic shelf registration statement on Form S-3 (File No. 333-155884) covering the public offering and sale of certain securities, including the Securities, under the Securities Act of 1933, as amended (the “1933 Act”), and the rules and regulations promulgated thereunder (the “1933 Act Regulations”), which automatic shelf registration statement became effective under Rule 462(e) under the 1933 Act Regulations (“Rule 462(e)"). Such registration statement, as of any time, means such registration statement as amended by any post-effective amendments thereto to such time, including the exhibits and any schedules thereto at such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B under the 1933 Act Regulations (“Rule 430B”), and is referred to herein as the “Registration Statement;” provided, however, that the “Registration Statement” without reference to a time means such registration statement as amended by any post-effective amendments thereto as of the time of the first contract of sale for the Securities, which time shall be considered the “new effective date” of such registration statement with respect to the Securities within the meaning of paragraph (f)(2) of Rule 430B, including the exhibits and schedules thereto as of such time, the documents incorporated or deemed incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof as of such time pursuant to the Rule 430B. Each preliminary prospectus used in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as a “preliminary prospectus.” Promptly after execution and delivery of this Agreement, the Company will prepare and file a final prospectus relating to the Securities in accordance with the provisions of Rule 424(b) under the 1933 Act Regulations (“Rule 424(b)"). The final prospectus, in the form first furnished or made available to the Underwriters for use in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as the “Prospectus.” For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (“EDGAR”) or its Interactive Data Electronic Applications system (“IDEA”).

As used in this Agreement:

“Applicable Time” means 7:00 A.M., New York City time, on July 23, 2010 or such other time as agreed by the Company and the Representatives.

“General Disclosure Package” means any Issuer General Use Free Writing Prospectuses issued at or prior to the Applicable Time, the preliminary prospectus (including any documents incorporated therein by reference) that is included in the Registration Statement as of the Applicable Time and the information included on Schedule B-1 hereto, all considered together.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the 1933 Act Regulations (“Rule 433”), including without limitation any “free writing prospectus” (as defined in Rule 405 of the 1933 Act Regulations (“Rule 405”)) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a “road show 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 Securities 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).

“Issuer General Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a “*bona fide* electronic road show,” as defined in Rule 433), as evidenced by its being specified in Schedule B-2 hereto.

“Issuer Limited Use Free Writing Prospectus” means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

All references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” (or other references of like import) in the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include all such financial statements and schedules and other information incorporated or deemed incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, as of the Applicable Time; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the “1934 Act”), incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, at or after the Applicable Time.

SECTION 1. Representations and Warranties.

(a) *Representations and Warranties by the Company.* The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Underwriter, as follows:

(i) Registration Statement and Prospectuses. The Company meets the requirements for use of Form S-3 under the 1933 Act. The Registration Statement is an “automatic shelf registration statement” (as defined in Rule 405) and the Securities have been and remain eligible for registration by the Company on such automatic shelf registration statement. Each of the Registration Statement and any post-effective amendment thereto has become effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 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 Company’s

knowledge, contemplated. 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 of its effectiveness and at each deemed effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) under the 1933 Act Regulations, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus (including the prospectus filed as part of the Registration Statement as originally filed or as part of any amendment thereto), at the time it was filed, complied in all material respects with the 1933 Act Regulations and each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR or IDEA, except to the extent permitted by Regulation S-T.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the “1934 Act Regulations”).

(ii) Accurate Disclosure. Neither the Registration Statement nor any amendment thereto, at its effective time, at the Closing Time or at any Date of Delivery, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included, includes or will include an untrue statement of a material fact or omitted, omits or will 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. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Time or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will 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 General Disclosure Package or the Prospectus (or any amendment or supplement thereto) made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein. For purposes of this Agreement, the only information so furnished shall be the information in the first paragraph under the heading “Underwriting—Commissions and Discounts,” the information in the second, third and fourth paragraphs under the heading “Underwriting—Price Stabilization, Short Positions” and the information under the heading “Underwriting—Electronic Offer, Sale and Distribution of Depositary Shares” 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, including any document incorporated by reference therein, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. Any offer that

is a written communication relating to the Securities made prior to the initial filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the 1933 Act Regulations) has been filed with the Commission in accordance with the exemption provided by Rule 163 under the 1933 Act Regulations (“Rule 163”) and otherwise complied with the requirements of Rule 163, including without limitation the legending requirement, to qualify such offer for the exemption from Section 5(c) of the 1933 Act provided by Rule 163.

(iv) Well-Known Seasoned Issuer. (A) At the original effectiveness of the Registration Statement, (B) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the 1933 Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act or form of prospectus), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the 1933 Act Regulations) made any offer relating to the Securities in reliance on the exemption of Rule 163, and (D) as of the Applicable Time, the Company was and is a “well-known seasoned issuer” (as defined in Rule 405).

(v) Company Not 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 1933 Act Regulations) of the Securities 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.

(vi) Independent Accountants. Ernst & Young LLP, the accountants who certified the financial statements and supporting schedules included in the Registration Statement, are independent public accountants with respect to the Company as required by the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations and the Public Company Accounting Oversight Board.

(vii) Financial Statements; Non-GAAP Financial Measures. The financial statements included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly the consolidated financial position of the Company and its consolidated subsidiaries at the dates indicated and the consolidated results of operations, stockholders’ equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; except as stated therein, said financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods involved. 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, if any, included in the Registration Statement, the General Disclosure Package 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. The pro forma financial statements and the related notes thereto, if any, included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly the information shown therein, have been prepared in accordance with the Commission’s rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. Except as included or incorporated by reference therein, no historical or pro forma financial statements or supporting

schedules are required to be included or incorporated by reference in the Registration Statement, the General Disclosure Package or the Prospectus under the 1933 Act or the 1933 Act Regulations. All disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus, or incorporated by reference therein, regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the 1934 Act and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable.

(viii) No Material Adverse Change in Business. Except as otherwise stated therein, since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, (A) there has been no material adverse change in the condition, financial or otherwise, or in the results of operations, 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 (a “Material Adverse Effect”), (B) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise, and (C) except for regular quarterly dividends on the Common Stock in amounts per share that are consistent with past practice, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(ix) Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in the State of Texas and in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(x) Good Standing of Subsidiaries. Each “significant subsidiary” of the Company (as such term is defined in Rule 1-02 of Regulation S-X) (each, a “Subsidiary” and, collectively, the “Subsidiaries”) has been duly organized and is validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as described in the General Disclosure Package and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not result in a Material Adverse Effect. Except as otherwise disclosed in the General Disclosure Package and the Prospectus, all of the issued and outstanding capital stock or other ownership interests of each Subsidiary has been duly authorized and validly issued, is fully paid and non assessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity. None of the outstanding shares of capital stock or other ownership interests of any Subsidiary was issued in violation of the preemptive or similar rights of any securityholder of such Subsidiary. The only Subsidiaries of the Company are listed on Exhibit 21.1 to the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

(xi) Capitalization. The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the General Disclosure Package and the Prospectus in the column entitled “Actual” under the caption “Capitalization” (except for subsequent issuances, if any,

pursuant to this Agreement, pursuant to reservations, agreements or employee benefit plans referred to in the General Disclosure Package and the Prospectus or pursuant to the exercise of convertible securities or options referred to in the General Disclosure Package and the Prospectus). The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. None of the outstanding shares of capital stock of the Company was issued in violation of the preemptive or other similar rights of any securityholder of the Company.

(xii) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xiii) Authorization of Deposit Agreement. The Deposit Agreement has been duly authorized and executed by the Company and, when delivered in accordance with its terms by each of the parties thereto, will constitute a valid and legally binding agreement of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, reorganization, moratorium, insolvency or similar laws of general applicability relating to or affecting creditors' rights generally or by equitable principles relating to enforceability.

(xiv) Authorization and Description of Securities. The Securities 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, upon due execution and delivery by the Depositary of the Securities and the deposit of the Series D Preferred Stock in respect thereof in accordance with the provisions of the Deposit Agreement and when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued. The issuance of the Securities is not subject to the preemptive or other similar rights of any securityholder of the Company. The Securities conform in all material respects to all statements relating thereto contained in the General Disclosure Package and the Prospectus and such description conforms in all material respects to the rights set forth in the instruments defining the same. The persons in whose names the Securities are registered will be entitled to the rights specified therein and in the Deposit Agreement. No holder of Securities will be subject to personal liability solely by reason of being such a holder.

(xv) Authorization and Description of Series D Preferred Stock. The Series D Preferred Stock to be issued and sold by the Company, when issued and delivered, may be freely deposited by the Company with the Depositary against issuance of the Securities; the Series D Preferred Stock has been duly and validly authorized by the Company for issuance and sale, and, when duly issued and deposited against issuance of the Securities, and upon the filing and effectiveness of the Certificate of Designations, will be validly issued, fully paid and non-assessable. Upon payment of the purchase price and deposit of the Series D Preferred Stock against issuance of the Securities in accordance with this Agreement and the Deposit Agreement, the Depositary will receive good, valid and marketable title to the Series D Preferred Stock, free and clear of all security interests, mortgages, pledges, liens, encumbrances, claims and restrictions. The Series D Preferred Stock conforms in all material respects to all statements relating thereto contained in the General Disclosure Package and the Prospectus and such description conforms in all material respects to the rights set forth in the instruments defining the same. No holder of the Series D Preferred Stock will be subject to personal liability solely by reason of being such a holder; and the issuance of the Series D Preferred Stock will not be subject to preemptive rights.

(xvi) Authorization and Description of Conversion Common Shares. Upon issuance and deposit of the Series D Preferred Stock against issuance of the Securities in accordance with this Agreement, the Deposit Agreement and the Prospectus and the filing and effectiveness of the Certificate of Designations, the Series D Preferred Stock will be convertible into the shares of Common Stock initially issuable upon the conversion of the Series D Preferred Stock. As of the date of this Agreement, 28,750,920 shares of Common Stock have been duly authorized and reserved for issuance by all necessary corporate actions upon the conversion of the Series D Preferred Stock in accordance with the terms of the Series D Preferred Stock and the Certificate of Designations, and such shares of Common Stock, when issued upon the conversion of the Series D Preferred Stock, will be validly issued and fully paid and non-assessable and will not be subject to the preemptive or other similar rights of any securityholder of the Company. The Conversion Common Shares conform in all material respects to all statements relating thereto contained in the General Disclosure Package and the Prospectus and such description conforms in all material respects to the rights set forth in the instruments defining the same. No holder of Conversion Common Shares, when issuable or converted, will be subject to personal liability solely by reason of being such a holder.

(xvii) Certificate of Designations. The Certificate of Designations has been duly authorized by the Company. The Certificate of Designations sets forth the rights, preferences and priorities of the Series D Preferred Stock, and the holders of the Series D Preferred Stock will have the rights set forth in the Certificate of Designations upon filing with the Secretary of State for the State of Delaware.

(xviii) Registration Rights. There are no persons with registration rights or other similar rights to have any securities registered for sale pursuant to the Registration Statement or otherwise registered for sale by the Company under the 1933 Act, other than those rights that have been disclosed in the General Disclosure Package and the Prospectus and have been waived.

(xix) Absence of Violations, Defaults and Conflicts. Neither the Company nor any of its subsidiaries is (A) in violation of its charter, by-laws or similar organizational document, (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any subsidiary is subject (collectively, "Agreements and Instruments"), except for such defaults that would not, singly or in the aggregate, result in a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, assets or operations (each, a "Governmental Entity"), except for such violations that would not, singly or in the aggregate, result in a Material Adverse Effect. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the General Disclosure Package and the Prospectus (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described therein under the caption "Use of Proceeds") and the Deposit Agreement and compliance by the Company with its obligations hereunder and under the Deposit Agreement have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any subsidiary pursuant to, the Agreements and Instruments (except for such conflicts, breaches, defaults or Repayment

Events or liens, charges or encumbrances that would not, singly or in the aggregate, result in a Material Adverse Effect), nor will such action result in any violation of (i) the provisions of the charter, by-laws or similar organizational document of the Company or any of its subsidiaries or (ii) any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity, except in the case of clause (ii) herein, for such violations that would not, singly or in the aggregate, result in a Material Adverse Effect. As used herein, a “Repayment Event” means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(xx) 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 would result in a Material Adverse Effect.

(xxi) Absence of Proceedings. Except as disclosed in the General Disclosure Package and the Prospectus, there is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, where (A) there is a reasonable possibility that such action, suit, proceeding, inquiry or investigation might be determined adversely to the Company or such subsidiary and (B) any such action, suit, proceeding, inquiry or investigation, if so determined adversely, would, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect or adversely affect the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder.

(xxii) Accuracy of Exhibits. There are no contracts or documents which are required by the 1933 Act or the 1933 Act Regulations to be described in the Registration Statement or to be filed as exhibits thereto which have not been so described and filed as required.

(xxiii) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the rules of the New York Stock Exchange, the NASDAQ Stock Market LLC or the Chicago Stock Exchange, state securities laws or the rules of Financial Industry Regulatory Authority, Inc. (“FINRA”).

(xxiv) Possession of Licenses and Permits. The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, “Governmental Licenses”) issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, result in a Material Adverse Effect. The Company and its subsidiaries are in compliance with the terms and conditions of all Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, result in a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, result in a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or

modification of any Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(xxv) Title to Property. The Company and its subsidiaries have valid, legal and defensible title to all of their interests in oil and gas properties and to all other real and personal property owned by them and any other real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except (A) such as are described in the General Disclosure Package and the Prospectus, (B) liens and encumbrances under operating agreements, unitization and pooling agreements, production sales contracts, farm-out agreements and other oil and gas exploration and production agreements, in each case that secure payment of amounts not yet due and payable for the performance of other inchoate obligations and are of a scope and nature customary in connection with similar drilling and producing operations or (C) those that do not, singly or in the aggregate, materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries.

(xxvi) Possession of Intellectual Property. The Company and its subsidiaries own or possess, or can acquire on reasonable terms, adequate trademarks, service marks and trade names (collectively, "Intellectual Property") necessary to carry on the business now operated by them, except as described in the General Disclosure Package and the Prospectus or where the failure to own or possess the same would not, singly or in the aggregate, result in a Material Adverse Effect, and neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein, and which infringement or conflict (if the subject of any unfavorable decision, ruling or finding) or invalidity or inadequacy, singly or in the aggregate, would result in a Material Adverse Effect.

(xxvii) Environmental Laws. Except as described in the General Disclosure Package and the Prospectus or would not, singly or in the aggregate, result in a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (B) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (C) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental

Entity, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or the violation of any Environmental Laws.

(xxviii) Accounting Controls and Disclosure Controls. The Company maintains effective internal control over financial reporting (as defined under Rule 13a-15 and 15d-15 under the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (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. Except as described in the General Disclosure Package and the 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 Company maintains an effective system of disclosure controls and procedures (as defined in Rule 13a-15 and Rule 15d-15 under the 1934 Act Regulations) that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, and is accumulated and communicated to the Company's management, including its principal executive officer or officers and principal financial officer or officers, as appropriate, to allow timely decisions regarding disclosure.

(xxix) Compliance with the Sarbanes-Oxley Act. The Company and its directors and officers, in their capacities as such, are in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(xxx) Payment of Taxes. The Company and its subsidiaries have filed all federal, state, local and foreign income and franchise tax returns required by law to be filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except for any taxes, assessments, fines or penalties as may be being contested in good faith and by appropriate proceedings or where the failure to do so would not reasonably be expected to have a Material Adverse Effect. The Company has made appropriate provisions in the financial statements included in the General Disclosure Package and the Prospectus in respect of all federal, state and foreign income and franchise taxes for all current or prior periods as to which the tax liability of the Company or any of its consolidated subsidiaries has not been finally determined except to the extent it would not have a Material Adverse Effect

(xxxi) Insurance. The Company and its subsidiaries carry or are entitled to the benefits of insurance, with, to the knowledge of the Company, financially sound and reputable insurers, in such amounts and covering such risks as is, in the opinion of the Company, appropriate for the size and business of the Company and its subsidiaries, and all such insurance is in full force and effect. The Company has no reason to believe that it or any of its subsidiaries will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect.

Neither of the Company nor any of its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(xxxii) Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the General Disclosure Package and the Prospectus will not be required, to register as an “investment company” under the Investment Company Act of 1940, as amended (the “1940 Act”).

(xxxiii) Absence of Manipulation. Neither the Company nor, to the knowledge of the Company, any affiliate of the Company has taken, nor will the Company or any affiliate take, directly or indirectly, any action which is designed, or would be expected, to cause or result in, or which has constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xxxiv) Foreign Corrupt Practices Act. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(xxxv) Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity that, in each case, are applicable to the business and operations of the Company (collectively, the “Money Laundering Laws”); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xxxvi) OFAC. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any of its subsidiaries, joint venture partners or other person, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxxvii) Oil and Gas Reserve Estimates. The information underlying the estimates of the Company’s oil and gas reserves as described in the General Disclosure Package and the

Prospectus is complete and accurate in all material respects (or, with regard to any information underlying the estimates prepared by any petroleum engineers retained by the seller of such oil and gas reserves, is, to the best knowledge of the Company after reasonable investigation, complete and accurate in all material respects); other than production of the Company's reserves in the ordinary course of business and intervening product price fluctuations described in the General Disclosure Package and the Prospectus, the Company is not aware of any facts or circumstances that would result in a material adverse change in such reserves or the present value of future net cash flows therefrom as described in the General Disclosure Package and the Prospectus. Estimates of such reserves and present values comply in all material respects with the applicable requirements of Regulation S-X and Items 1201-1208 of Regulation S-K under the 1933 Act.

(xxxviii) Independent Petroleum Engineers. Ryder Scott Company, the petroleum engineers who have consented to being named as having reviewed certain reserve data included in the General Disclosure Package and the Prospectus, are independent engineers with respect to the Company and its subsidiaries.

(xxxix) Statistical and Market-Related Data. Any statistical and market-related data included in the General Disclosure Package or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(xl) Mariner Merger. Except as otherwise disclosed in the General Disclosure Package and the Prospectus, subject to the approval of stockholders of Mariner Energy, Inc. ("Mariner"), nothing has come to the Company's attention that would cause it to reasonably believe that the merger of Mariner with and into a wholly owned subsidiary of the Company (the "Mariner Merger") pursuant to that Agreement and Plan of Merger, dated April 14, 2010 (the "Mariner Merger Agreement"), among the Company, a wholly owned subsidiary of the Company and Mariner, will not be consummated substantially in accordance with the terms of the Mariner Merger Agreement.

(xli) BP Asset Acquisitions. Except as otherwise disclosed in the General Disclosure Package and the Prospectus, nothing has come to the Company's attention that would cause it to reasonably believe that those acquisitions of certain assets pursuant to the (i) Purchase and Sale Agreement by and between BP America Production Company and ZPZ Delaware I LLC, (ii) Partnership Interest and Share Purchase and Sale Agreement by and between BP Canada Energy and Apache Canada Ltd. and (iii) Purchase and Sale Agreement by and between BP Egypt Company, BP Exploration (Delta) Limited and ZPZ Egypt Corporation LDC (collectively, the "PSAs"), each dated as of July 20, 2010, will not be consummated substantially in accordance with the terms of the PSAs.

(c) Officers' Certificates. Any certificate signed by any officer of the Company or any of its subsidiaries delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

SECTION 2. Sale and Delivery to Underwriters; Closing.

(a) Initial Securities. 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 each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the

Company, at the price per share set forth in Schedule A, that number of Initial Securities set forth in Schedule A opposite the name of the Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof, subject, in each case, to such adjustments among the Underwriters as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(b) *Option Securities.* In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional 3,300,000 Depositary Shares at the price per share set forth in Schedule A, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities. The option hereby granted will expire 30 days after the date hereof and may be exercised in whole or in part from time to time only for the purpose of covering overallotments made in connection with the offering and distribution of the Initial Securities upon notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "Date of Delivery") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A opposite the name of such Underwriter bears to the total number of Initial Securities, subject, in each case, to such adjustments as the Representatives in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(c) *Delivery of and Payment for the Securities.* Payment of the purchase price for, and delivery of, the Initial Securities shall be made at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, or at such other place as shall be agreed upon by the Representatives and the Company, at 9:00 A.M. (New York City time) on July 28, 2010 (unless postponed in accordance with the provisions of Section 10), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "Closing Time").

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of, such Option Securities shall be made at the above-mentioned offices of Davis Polk & Wardwell LLP, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from the Representatives to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated by the Company against delivery to the Representatives for the respective accounts of the Underwriters of the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. Merrill Lynch, Citigroup, Goldman Sachs and JP Morgan, each individually and not as representatives of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder. The Company shall deliver the Firm Securities and the Option Securities, if any, through the facilities of The Depository Trust Company ("DTC") unless the Representatives shall otherwise instruct.

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

(a) *Compliance with Securities Regulations and Commission Requests*. The Company will prepare the Prospectus in a form approved by the Representatives and file such Prospectus pursuant to Rule 424(b) under the 1933 Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement. The Company will make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the last Date of Delivery except as provided herein. The Company will advise the Representatives, promptly after it receives notice thereof, of the time when any amendment or supplement to the Registration Statement or the Prospectus has been filed and to furnish the Representatives with copies thereof. The Company will advise the Representatives, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding or examination for any such purpose or of any request by the Commission for the amending or supplementing of the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus or for additional information. In the event of the issuance of any stop order or of any order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus or suspending any such qualification, the Company will use all reasonable efforts to obtain withdrawal of such order promptly. The Company will advise the Representatives, promptly after it receives notice thereof, if it becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities.

(b) *Amendments and Supplements*. The Company will file promptly with the Commission any amendment or supplement to the Registration Statement or the Prospectus that may, in the judgment of the Company or the Representatives, be required by the 1933 Act or requested by the Commission. If at any time when a prospectus is required by the 1933 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, to amend or supplement the Registration Statement, General Disclosure Package or Prospectus, as applicable, in order that the Registration Statement, General Disclosure Package or Prospectus, as applicable, 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, the Company shall promptly notify the Representatives and prepare any amendment or supplement necessary to correct such misstatement or omission. Prior to filing with the Commission any amendment or supplement to the Registration Statement or the Prospectus, the Company will furnish a copy thereof to the Representatives and counsel for the Underwriters and obtain the consent of the Representatives to the filing, which consent shall be provided promptly and shall not be unreasonably withheld.

(c) *Delivery of Registration Statements*. The Company has furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, signed 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 Representatives, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of 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 each Underwriter, without charge, as many copies of each preliminary prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, 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 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter 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 use its best efforts, in cooperation 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 Representatives may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent 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 1934 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 1933 Act.

(g) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the General Disclosure Package and the Prospectus under “Use of Proceeds.”

(h) *Deposit of Series D Preferred Stock.* The Company will prior to the Closing Time or any Date of Delivery, as applicable, deposit the Series D Preferred Stock in accordance with the terms and provisions of the Deposit Agreement and otherwise comply with the Deposit Agreement so that the Securities will be issued by the Depositary against receipt of such Series D Preferred Stock and delivered to the Underwriters against payment therefor at the Closing Time or any Date of Delivery, as applicable.

(i) *Conversion Common Shares Reserve.* The Company will use its commercially reasonable efforts to satisfy the “authorized share condition” (as defined in the General Disclosure Package) on or prior to its next annual meeting of stockholders in accordance with the term of the Certificate of Designations, and if the authorized share condition is not satisfied by such annual meeting, use its best effort thereafter to satisfy the authorized share condition as promptly as practicable. Upon satisfaction of the authorized share condition, the Company will continue to reserve and keep available at all times, free of preemptive rights, the number of shares of Common Stock then issuable by the Company upon conversion of the Series D Preferred Stock in accordance with the terms of the Certificate of Designations, which number shall not, at any time, be less than the number of shares of Common Stock required to satisfied the authorized share condition.

(j) *Fundamental Change Preferred Stock Reserve.* Until the authorized share condition is satisfied, the Company will reserve a sufficient number of authorized shares of preferred stock to permit all holders of the Series D Preferred Stock to receive shares of “fundamental change preferred stock” (as defined in the General Disclosure Package) upon a “fundamental change” (as defined in the General Disclosure Package) in accordance with the Certificate of Designations.

(k) *Listing*. The Company will use all reasonable efforts to (i) effect the listing of the Securities on the New York Stock Exchange within 5 days of the Closing Time, (ii) effect the listing of the Conversion Common Shares, to the extent available for issuance at the Closing Time, on the New York Stock Exchange, the NASDAQ Global Select Market and the Chicago Stock Exchange at the Closing Time and any remaining Conversion Common Shares required to be reserved as soon as reasonably practicable following the satisfaction, in whole or at each time in part, of Section 3(i) in this Agreement and (iii) maintain the listing of the Securities and the Conversion Common Shares on such exchanges as applicable.

(l) *Restriction on Sale of Securities*. During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, (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 shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or file any registration statement under the 1933 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, 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. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, including the issuance of the Series D Preferred Stock and any Conversion Common Shares issued pursuant to the terms of the Series D Preferred Stock and the Certificate of Designations, (B) any shares of 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 and referred to in the General Disclosure Package and the Prospectus, (C) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing employee benefit plans of the Company referred to in the General Disclosure Package and the Prospectus, (D) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan referred to in the General Disclosure Package and the Prospectus, (E) the shares of Common Stock issuable in connection with the Mariner Merger, provided that the Mariner Merger is consummated substantially in accordance with the terms of the Mariner Merger Agreement and the disclosure related to the Mariner Merger in the Company's Registration Statement on Form S-4 filed with the Commission on May 19, 2010, as amended on June 29, 2010, or (G) the issuance and sale of up to 26,450,000 shares of Common Stock pursuant to that Underwriting Agreement dated the date hereof among the Company, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Goldman, Sachs & Co. and J.P. Morgan Securities Inc., as the representatives of the several underwriters named therein. Notwithstanding the foregoing, if (1) during the last 17 days of the 90-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs or (2) prior to the expiration of the 90-day restricted period, the Company announces that it will issue an earnings release or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the 90-day restricted period, the restrictions imposed in this clause (i) shall continue to apply until the expiration of the 18-day period beginning on the date of the issuance of the earnings release or the occurrence of the material news or material event, unless the Representatives waive, in writing, such extension.

(m) *Reporting Requirements*. The Company, 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 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and 1934Act Regulations. Additionally, the Company shall report the use of proceeds from the issuance of the Shares as may be required under Rule 463 under the 1933 Act.

(n) *Issuer Free Writing Prospectuses*. The Company agrees that, unless it obtains the prior written consent of the Representatives, 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 Representatives will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule C-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 Representatives. 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 Representatives 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 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 Representatives 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.

(o) *Conversion Rate of Series D Preferred Stock*. Between the date hereof and the Closing Time, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion rate of the Series D Preferred Stock.

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, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of the Certificate of Designations, Deposit Agreement, each preliminary prospectus, each Issuer Free Writing Prospectus the Prospectus and any amendments or supplements thereto, (iii) the preparation, issuance and delivery of the Securities to the Underwriters, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters, (iv) the fees and disbursements of the Company’s counsel, accountants, independent petroleum engineers and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, (vi) the fees and expenses of any transfer agent or registrar for the Securities and the Depositary, (vii) the fees and costs of obtaining a CUSIP or other identification number for the Securities, (viii) the costs and expenses of the Company relating to investor presentations on any “road show” undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of aircraft and other transportation chartered in connection with the road show, (ix) the fees and expenses incurred in connection with the listing of the Securities on the New York Stock Exchange and the underlying Conversion Common Shares on the New York Stock Exchange, the Nasdaq Global Market and the Chicago Stock Exchange and (x) the costs and expenses (including, without limitation, any damages or other amounts payable in connection with legal or contractual liability) associated with the reforming of any contracts for sale of the Securities made by the Underwriters caused by a breach of the representation contained in the third sentence of Section 1(a)(ii); *provided that*, except as provided in this Section 4, the Underwriters shall pay their own costs and expenses, including the fees and expenses of their counsel, any

transfer taxes on the Securities which they may sell and the expenses of advertising any offering of the Securities made by the Underwriters.

(b) *Termination of Agreement.* If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5, Section 9 (other than Section 9(a)(ii), (iv), (v) or (vi)), Section 10 or Section 11 hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters; provided that if this Agreement is terminated pursuant to Section 10 hereof, such reimbursement of out-of-pocket expenses shall only be made by the Company to the non-defaulting Underwriters.

SECTION 5. Conditions of Underwriters' Obligations. The obligations of the several 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 or any of its subsidiaries 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.* The 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 shall have been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus shall have been issued and no proceedings for any of those purposes shall have been instituted or be pending or, to the Company's knowledge, contemplated; and the Company shall have complied with each request (if any) from the Commission for additional information. The Company shall have paid the required Commission filing fees relating to the Securities within the time period required by Rule 456(1)(i) under the 1933 Act Regulations without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the 1933 Act Regulations and, if applicable, shall have updated the "Calculation of Registration Fee" table in accordance with Rule 456(b)(1)(ii) either in a post-effective amendment to the Registration Statement or on the cover page of a prospectus filed pursuant to Rule 424(b).

(b) *Opinion of Counsel for Company.* At the Closing Time, the Representatives shall have received the favorable opinion, dated the Closing Time, of Bracewell & Giuliani LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, to the effect set forth in Exhibit A hereto.

(c) *Opinion of Counsel for Underwriters.* At Closing Time, the Representatives shall have received the favorable opinion, dated the Closing Time, of Davis Polk & Wardwell LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, with respect to such matters as the Representatives may require. 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 Representatives. 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 General Disclosure Package or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the results of operations, 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 Representatives shall have

received a certificate of the Chief Executive Officer or the President of the Company and of the chief financial or chief accounting officer of the Company (which may be the same person), dated the Closing Time, to the effect that (i) there has been no such material adverse change, (ii) the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, (iv) no stop order suspending the effectiveness of the Registration Statement under the 1933 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, contemplated, and (v) there has been no decrease in or withdrawal of the rating of any securities of the Company or any of its subsidiaries by any “nationally recognized statistical rating organization” (as defined for purposes of Rule 436(g) under the 1933 Act) nor has any notice been given of any intended or potential decrease in or withdrawal of any such rating.

(e) *Accountant’s Comfort Letters.* At the time of the execution of this Agreement, the Representatives shall have received from Ernst & Young LLP, independent registered public accountants for the Company, a letter, dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other 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 the Registration Statement, the General Disclosure Package and the Prospectus.

(f) *Bring-down Comfort Letters.* At the Closing Time, the Representatives shall have received from Ernst & Young LLP, independent registered public accountants for the Company, a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) 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) *Engineers’ Letters.* At the time of execution of this Agreement, the Representatives shall have received a letter, dated such date, in form and substance satisfactory to the Representative, together with signed or reproduced copies of such letter for each of the other Underwriters, from Ryder Scott Company Petroleum Engineers with respect to such matters as the Representatives may require.

(h) *Certificate of Designations.* At the Closing Time, the Certificate of Designations shall have been filed by the Company with the Secretary of State of the State of Delaware and shall have become effective.

(i) *Deposit Agreement.* The Deposit Agreement shall have become effective.

(j) *Assurance Certificate.* At the time of execution of this Agreement, the Representatives shall have received a certificate containing certain assurances set forth therein from the Principal Financial Officer of the Company in form and substance satisfactory to the Representatives.

(k) *Bring-down Assurance Certificate.* At the Closing Time, the Representatives shall have received a certificate containing certain assurances set forth therein from the Principal Financial Officer of the Company in form and substance satisfactory to the Representatives reaffirming the statements they made in the letter furnished pursuant to subsection (j) of this Section as of the date hereof.

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

(m) *Maintenance of Rating.* Since the execution of this Agreement, there shall not have been any decrease in or withdrawal of the rating of any securities of the Company or any of its subsidiaries by any “nationally recognized statistical rating organization” (as defined for purposes of Rule 436(g) under the 1933 Act) or any notice given of any intended or potential decrease in or withdrawal of any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(n) *Conditions to Purchase of Option Securities.* In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company or any of its subsidiaries hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers’ Certificate. A certificate, dated such Date of Delivery, of the President or a Vice President of the Company and of the chief financial or chief accounting officer of the Company (which may be the same person) confirming that the certificate delivered at the Closing Time pursuant to Section 5(d) hereof remains true and correct as of such Date of Delivery.

(ii) Opinion of Counsel for Company. If requested by the Representatives, the favorable opinion of Bracewell & Giuliani LLP, counsel for the Company, in form and substance satisfactory to counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iii) Opinion of Counsel for Underwriters. If requested by the Representatives, the favorable opinion of Davis Polk & Wardwell LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(iv) Bring-down Comfort Letter. If requested by the Representatives, a letter from Ernst & Young LLP, independent registered public accountants for the Company, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(f) hereof, except that the “specified date” in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(v) Bring-down Assurance Certificate. If requested by the Representatives, a certificate, dated such Date of Delivery, containing certain assurances set forth therein from the Principal Financial Officer of the Company in form and substance satisfactory to the Representatives.

(o) *Additional Documents.* At the Closing Time and at each Date of Delivery (if any) 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 Securities 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.

(p) *Termination of Agreement.* If any condition specified in this Section shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may be terminated by the

Representatives by notice to the Company at any time at or prior to Closing Time or such Date of Delivery, as the case may be, 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 and 16 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, its affiliates (as such term is defined in Rule 501(b) under the 1933 Act (each, an “Affiliate”)), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 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 any information deemed to be a part thereof pursuant to Rule 430B, 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 or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom 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 (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Representatives), 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 agreement 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 any information deemed to be a part thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) *Indemnification of Company, Directors and Officers.* Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, 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 1933 Act or Section 20 of the 1934 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 any information deemed to be a part

thereof pursuant to Rule 430B, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) *Actions against Parties; Notification.* Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representatives, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement without Consent if Failure to Reimburse.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

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 Securities 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 Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities

pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of the Securities as set forth on the cover of the Prospectus.

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 (even if the Underwriters were treated as one entity for such purpose) 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, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions 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 1933 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 an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates 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 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

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 or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company and (ii) delivery of and payment for the Securities.

SECTION 9. Termination of Agreement.

(a) *Termination.* The Representatives 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 Representatives, since the time of execution of this Agreement or since the respective dates as of which information is given in the General Disclosure Package or the Prospectus, any material adverse change in

the condition, financial or otherwise, or in the results of operations, 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 Representatives, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the New York Stock Exchange, the Nasdaq Global Market or the Chicago Stock Exchange, or (iv) if trading generally on the New York Stock Exchange, the Nasdaq Global Market or the Chicago Stock Exchange 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 with respect to Clearstream or Euroclear systems in Europe, or (vi) if a banking moratorium has been declared by either Federal, New York or Texas 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 and 16 shall survive such termination and remain in full force and effect.

SECTION 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the “Defaulted Securities”), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either (i) the Representatives or (ii) the Company shall have the right to postpone the Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days

in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements. As used herein, the term “Underwriter” includes any person substituted for an Underwriter under this Section 10.

SECTION 11. Default by the Company. If the Company shall fail at the Closing Time or a Date of Delivery, as the case may be, to sell the number of Securities that it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any Underwriter; provided, however, that the provisions of Sections 1, 4, 6, 7, 8, 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 each of (i) Merrill Lynch, Pierce, Fenner & Smith Incorporated at One Bryant Park, New York, New York 10036, Attention: Syndicate Department, with a copy to ECM Legal, (ii) Citigroup Global Markets Inc. General Counsel (fax no.: 212-816-7912) and confirmed to the General Counsel, Citigroup Global Markets Inc., at 388 Greenwich Street, New York, New York 10013, Attention: General Counsel, (iii) Goldman, Sachs & Co. at 200 West Street, New York, New York 10282, Attention: Registration Department and (iv) J.P. Morgan Securities Inc. at 383 Madison Avenue, New York, New York 10179, (Fax: (212) 622-8358); Attention: Equity Syndicate Desk. Notices to the Company shall be directed to it at Apache Corporation, 2000 Post Oak Boulevard, Suite 100, Houston, Texas 77056-4400, Attention: Matthew W. Dundrea, Vice President and Treasurer, with a copy to the attention of P. Anthony Lannie, Executive Vice President and General Counsel, and a copy to: Bracewell & Giuliani LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002, Attention: John Brantley.

SECTION 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the initial public offering price of the Securities and any related discounts and commissions, is an arm’s-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, any of its subsidiaries, or its respective stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any of its subsidiaries on other matters) and no Underwriter has any obligation to the Company with respect to the offering of the Securities 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 Securities and the Company has consulted its own respective legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

SECTION 14. Parties. This Agreement shall 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 any Underwriter shall be deemed to be a successor by reason merely of such purchase.

SECTION 15. Patriot Act. The Company acknowledges and agrees that in accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

SECTION 16. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, 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 17. 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 18. 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 the federal courts of the United States of America located in the City and County of New York, Borough of Manhattan, unless any such Federal court determines that it lacks jurisdiction over a Related Proceeding in which case such Related Proceeding shall be instituted in the courts of the State of New York, in each case 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 19. 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 20. Partial Unenforceability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

SECTION 21. 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. Facsimile copies of signatures shall constitute original signatures for all purposes of this Agreement and any enforcement hereof.

SECTION 22, Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

[Signature Pages Follow]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,

APACHE CORPORATION

By: /s/ Matthew W. Dundrea

Name: Matthew W. Dundrea

Title: Vice President & Treasurer

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

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ David McShane
Name: David McShane
Title: Managing Director

CITIGROUP GLOBAL MARKETS INC.

By: /s/ Michael V. Cottone
Name: Michael Cottone
Title: Vice President

GOLDMAN, SACHS & CO.

By: /s/ John Daly
Goldman, Sachs & Co.

J.P. MORGAN SECURITIES INC.

By: /s/ Jeff Zajkowski
Name: Jeff Zajkowski
Title: Managing Director

For themselves and as Representatives of the other
Underwriters named in Schedule A hereto.

SCHEDULE A

The initial public offering price per share for the Securities shall be \$50.00.

The purchase price per share for the Securities to be paid by the several Underwriters shall be \$48.50, being an amount equal to the initial public offering price set forth above less \$1.50 per share, subject to adjustment in accordance with Section 2(b) for dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities.

Name of Underwriter	Number of Initial Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	5,500,000
Citigroup Global Markets Inc.	5,500,000
Goldman, Sachs & Co.	5,500,000
J.P. Morgan Securities Inc.	5,500,000
Total	<u>22,000,000</u>

Sch A-1

SCHEDULE B-1

Pricing Terms

1. The Company is selling 22,000,000 Depositary Shares.
2. The Company has granted an option to the Underwriters, severally and not jointly, to purchase up to an additional 3,300,000 Depositary Shares.
3. The initial public offering price per share for the Securities shall be \$50.00.

Sch B-1

SCHEDULE B-2

Free Writing Prospectus

[Follows]

Sch B-1

SCHEDULE C

List of Persons and Entities Subject to Lock-up

G. Steven Farris	Director, Chairman and Chief Executive Officer
Roger B. Plank	President
John A. Crum	Co-Chief Operating Officer and President — North America
Rodney J. Eichler	Co-Chief Operating Officer and President — International
Michael S. Bahorich	Executive Vice President and Technology Officer
Jon A. Jeppesen	Executive Vice President
P. Anthony Lannie	Executive Vice President and General Counsel
W. Kregg Olson	Executive Vice President
Sarah B. Teslik	Senior Vice President
John R. Bedingfield	Vice President — Worldwide Exploration and New Ventures
David A. Carmony	Vice President — Environmental, Health and Safety
Thomas P. Chambers	Vice President — Planning and Investor Relations
Matthew W. Dundrea	Vice President and Treasurer
Robert J. Dye	Vice President — Corporate Services
David L. French	Vice President — Business Development
Margery M. Harris	Vice President — Human Resources
Rebecca A. Hoyt	Vice President and Controller
Janine J. McArdle	Vice President — Oil and Gas Marketing
Aaron S.G. Merrick	Vice President — Information Technology
Urban F. O'Brien	Vice President — Government Affairs
Jon W. Sauer	Vice President — Tax
Cheri L. Peper	Corporate Secretary
Frederick M. Bohen	Director
Randolph M. Ferlic	Director
Eugene C. Fiedorek	Director
A. D. Frazier, Jr.	Director
Patricia Albjerg Graham	Director
John A. Kocur	Director
George D. Lawrence	Director
F. H. Merelli	Director
Rodman D. Patton	Director
Charles J. Pitman	Director

FORM OF OPINION OF COMPANY'S COUNSEL

1. The Company is validly existing and in good standing as a corporation under the laws of the State of Delaware, and has full corporate power and authority to own, lease and operate its properties and to conduct its business as such business is described in the Prospectus and to enter into its obligations under the Agreement and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect;
2. Each U.S. Subsidiary [to be defined in the opinion] is validly existing and in good standing under the laws of the jurisdiction of its incorporation, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect; and except as otherwise disclosed in the Registration Statement, all of the issued and outstanding capital stock of each U.S. Subsidiary, to such counsel's knowledge after due inquiry, is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity;
3. The Securities delivered on the date hereof (i) have been duly authorized for issuance and sale to the Underwriters pursuant to the Agreement and, when issued and delivered against payment of the consideration therefor pursuant to the Underwriting Agreement, will be validly issued, and no holder of the Securities is or will be subject to personal liability solely by reason of being such a holder, (ii) conform as to legal matters in all material respects to the description thereof under the caption "Description of Depositary Shares" in the Prospectus;
4. The shares of Series D Preferred Stock issued and delivered on the date hereof (i) have been duly authorized for issuance, and, when issued and deposited with the Depositary against issuance of the Securities, will be validly issued, fully paid and nonassessable, and no holder of the Series D Preferred Stock is or will be subject to personal liability solely by reason of being such a holder and (ii) conform as to legal matters in all material respects to the description thereof under the caption "Description of the Mandatory Convertible Preferred Stock" in the Prospectus; and to such counsel's knowledge after due inquiry, the holders of capital stock of the Company have no pre-emptive rights with respect to the shares of Series D Preferred Stock delivered on the date hereof;
5. (i) As of the date of this Agreement, 28,750,920 shares of Common Stock have been duly authorized and reserved for issuance by all necessary corporate actions upon the conversion of the Series D Preferred Stock in accordance with the terms of the Series D Preferred Stock, and the Certificate of Designations and such shares of Common Stock, upon issuance thereof upon the conversion of the Series D Preferred Stock, will be validly issued, fully paid and nonassessable, and no holder of the Common Stock will be subject to personal liability solely by reason of being such a holder and (ii) the Company's Common Stock conforms as to legal matters in all material respects to the

description thereof under the caption “Description of Apache Corporation Capital Stock” in the Prospectus; and to such counsel’s knowledge after due inquiry, the holders of Common Stock of the Company have no pre-emptive rights with respect to the Common Stock to be reserved in connection herewith;

6. To such counsel’s knowledge after due inquiry, except as disclosed in the Prospectus, no person or entity has the right to require the registration under the 1933 Act of Common Stock or other securities of the Company, which right has not been waived; and to such counsel’s knowledge after due inquiry, except as described in the Prospectus or provided in various employee or director compensation plans, there are no agreements to issue, and there are no outstanding options, warrants or other rights calling for the issuance of, any Common Stock to any person, nor any security or other instrument, that by its terms is convertible into, exercisable for or exchangeable for Common Stock;
7. The Registration Statement[, including any Rule 462(b) Registration Statement,] has become effective under the 1933 Act; any filings of the Preliminary Prospectus Supplement or the Prospectus Supplement required prior to the date hereof pursuant to Rule 424(b) under the 1933 Act have been made in the manner and within the time period required by Rule 424(b); any required filing of each Issuer Free Writing Prospectus pursuant to Rule 433 has been made in the manner required by Rule 433(d); and, to such counsel’s knowledge after due inquiry, no stop order suspending the effectiveness of the Registration Statement [or any Rule 462(b) Registration Statement] has been issued under the 1933 Act and no proceedings for that purpose have been instituted or threatened by the Commission;
8. The Registration Statement and the Prospectus, excluding in each case the documents incorporated by reference therein, as of their respective effective or issue dates (other than the financial statements and notes thereto and supporting schedules and other financial or accounting data and information pertaining to natural resource reserves included therein or omitted therefrom and the Trustee’s Statement of Eligibility on Form T-1, as to which such counsel need express no opinion) appeared on their face to comply as to form in all material respects with the requirements of the 1933 Act and the rules and regulations promulgated by the Commission thereunder;
9. The Agreement has been duly authorized, executed and delivered by the Company;
10. The Certificate of Designations has been duly authorized, executed and filed by the Company; and the Certificate of Designations sets forth rights, preferences and priorities of the Series D Preferred Stock;
11. The Deposit Agreement has been duly authorized, executed and delivered by the Company and, assuming the due authorization, execution and delivery thereof by the Depositary, constitutes a valid and legally binding agreement enforceable against the Company in accordance with its terms.
12. The execution and delivery by the Company of the Agreement, the consummation of the transactions therein contemplated and the use of the net proceeds from the sale of the Securities in the manner described in the Prospectus under the caption “Use of Proceeds” do not (i) violate or constitute a default or Repayment Event under (or constitute an event that, with the giving of notice or lapse of time or both, would constitute such a default or Repayment Event under) the terms or provisions of any indenture, mortgage, deed of

trust or loan agreement or other agreement or instrument filed or incorporated by reference as an exhibit to the Company's most recently filed annual report on Form 10-K or to any Form 10-Q or Form 8-K of the Company filed since the filing of such Annual Report on Form 10-K, (ii) violate any provision of the certificate of incorporation or bylaws of the Company, (iii) violate any existing obligation of the Company under any existing court or administrative order, judgment or decree of which such counsel has knowledge after due inquiry, or (iv) violate any applicable provisions of the federal laws of the United States (based on the limitations set forth below), the laws of the State of Texas, the laws of the State of New York or the General Corporation Law of the State of Delaware;

13. No consent, approval, authorization or order of, or filing with, any federal, Delaware, New York or Texas court or governmental agency or body having jurisdiction over the Company is required to be made or obtained by the Company under federal or Texas law, the General Corporation Law of the State of Delaware or the laws of the State of New York for the consummation by the Company of the transactions contemplated by the Agreement in connection with the issue and sale of the Securities by the Company and the execution and delivery of the Agreement by the Company, except (i) as may be required under state securities or "Blue Sky" laws in connection with the purchase and distribution of the Securities by the Underwriters, and (ii) such as the failure to obtain or make would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect;
14. To such counsel's knowledge after due inquiry, and other than as set forth in the Prospectus, there is no legal or governmental proceeding pending or threatened against the Company which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;
15. Subject to the qualifications set forth therein, the discussion set forth in the Prospectus under the caption "Certain U.S. Federal Tax Consequences" is a summary of the United States federal income tax matters described therein that is accurate in all material respects;
16. The documents incorporated by reference in the Registration Statement and the Prospectus (other than the financial statements and notes thereto, schedules and related data and other financial or accounting data and information pertaining to natural resource reserves included therein or omitted therefrom, as to which such counsel need express no opinion), when they were filed with the Commission, appeared on their face to comply as to form in all material respects with the requirements of the particular form under the 1934 Act and the rules and regulations promulgated by the Commission thereunder; and, to such counsel's knowledge after due inquiry, there are no documents that are required to be filed as exhibits to any of such documents incorporated by reference that are not so filed; and
17. The Company is not, and upon the application of the net proceeds from the issuance and sale of the Securities in the manner described under the caption "Use of Proceeds" in the Prospectus will not be, subject to regulation as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

Such counsel may state that such opinion is based on and is limited to the relevant federal law of the United States of America, the law of the State of Texas, the law of the State of New York and the General

Corporation Law of the State of Delaware, and that it renders no opinion with respect to the state securities or “Blue Sky” laws of any jurisdiction or the law of any other jurisdiction. Such counsel may note that it is not admitted to the practice of law in the State of Delaware. With respect to paragraph 8, such counsel may state that it renders no opinion with respect to the anti-fraud provisions of the federal securities laws. Also with respect to paragraph 8, such counsel may state that it made no examination of any accounting or financial matters and expresses no opinion with respect thereto.

Such counsel may state that in addition to the limitations and qualifications set forth above, the enforceability of obligations of the Company under the Deposit Agreement is subject to the effect of any applicable bankruptcy (including, without limitation, fraudulent conveyance and preference), insolvency, reorganization, rehabilitation, moratorium or similar laws and decisions relating to or affecting the enforcement of creditors’ rights generally, and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, and the possible unavailability of specific performance or injunctive relief; such principles are of general application, and in applying such principles a court, among other things, might decline to order the Company to perform covenants. Further, such counsel need express no opinion with respect to the enforceability of provisions in the Deposit Agreement with respect to waiver, delay, extension or omission of notice or enforcement of rights or remedies, waivers of defenses or waivers of benefits of stay, extension, moratorium, redemption, statutes of limitations or other benefits provided by operation of law. Further, such counsel may state that the enforceability of any exculpation, indemnification or contribution provisions contained in the Deposit Agreement may be limited by applicable law or public policy.

Such counsel may state that whenever its opinion is based on factual matters that are “of which such counsel has knowledge after due inquiry” or “to such counsel’s knowledge after due inquiry,” it has, with the Underwriters’ concurrence, relied to the extent it deems appropriate on certificates of officers (after the discussion of the contents thereof with such officers) of the Company or certificates of others as to the existence or nonexistence of the factual matters upon which such opinion is predicated. Such counsel shall state that it has no reason to believe, however, that any such certificate is untrue or inaccurate in any material respect.

Such counsel may also state that, because the primary purpose of its engagement was not to establish or confirm factual matters or financial or accounting matters or matters pertaining to natural resource reserves and because of the wholly or partially non-legal character of many of the statements contained in the Registration Statement, the General Disclosure Package and the Prospectus, such counsel is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement, the General Disclosure Package or the Prospectus (except to the extent expressly set forth in clause (ii) of paragraph 3, in clause (ii) of paragraph 4 or in paragraph 15 above), and such counsel has not independently verified the accuracy, completeness or fairness of such statements (except as aforesaid). Without limiting the foregoing, such counsel may state that it assumes no responsibility for, has not independently verified and has not been asked to comment on the accuracy, completeness or fairness of the financial statements and notes thereto, schedules and related data and other financial or accounting data or information pertaining to natural resource reserves included in the Registration Statement, the General Disclosure Package, the Prospectus or the exhibits to the Registration Statement, and it has not examined the accounting, financial or other records from which such financial statements and notes thereto, schedules and related data and other financial or accounting data or information pertaining to natural resource reserves contained therein were derived. Such counsel may note that, although certain portions of the Registration Statement have been included therein on the authority of “experts” within the meaning of the Securities Act, such counsel are not experts with respect to any portion of the Registration Statement, including, without limitation, such financial statements and notes thereto, schedules and related data and other financial or accounting data or information pertaining

to natural resource reserves included therein. Such counsel may note that it did not participate in the preparation of the documents incorporated by reference in the Registration Statement or the Prospectus. However, such counsel shall state that it has participated in conferences with officers and other representatives of the Company, its auditors, and representatives of the Underwriters, including the Underwriters' counsel, at which the contents of the Registration Statement, the General Disclosure Package and the Prospectus and related matters were discussed, and that based upon such participation and review, and relying as to materiality in part upon the factual statements of officers and other representatives of the Company and upon representatives of the Underwriters, such counsel shall advise the Underwriters that no facts have come to such counsel's attention that have caused it to believe that the Registration Statement, including any information included in the Prospectus which was omitted from such Registration Statement at the time it became effective but that is deemed to be part of and included in such Registration Statement pursuant to Rule 430B under the 1933 Act, at the effective date with respect to the Underwriters pursuant to Rule 430B(f)(2) under the 1933 Act, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus, as of its date or as of the date hereof, or that the General Disclosure Package at the Applicable Time, contained or contains an untrue statement of a material fact or omitted or omits 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, it being understood that such counsel shall not be asked to comment on, and it may express no belief with respect to, the financial statements and notes thereto, schedules and related data and other financial or accounting data or information pertaining to natural resource reserves or exhibits (including the Form T-1) contained or incorporated by reference in or omitted from the Registration Statement, the General Disclosure Package or the Prospectus, it also being understood that, with respect to statements contained in the General Disclosure Package, any statement contained in any of the constituent documents shall be deemed to be modified or superseded to the extent that any information contained in subsequent constituent documents modifies or replaces such statement.

[FORM OF LOCK-UP AGREEMENT]

_____, 2010

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Goldman, Sachs & Co.
200 West Street
New York, New York 10282

J.P. Morgan Securities Inc.
383 Madison Avenue
New York, NY 10179

as Representatives of the several
Underwriters to be named in the
within-mentioned Underwriting Agreement

Re: Proposed Public Offering by Apache Corporation

Dear Sirs:

The undersigned, a stockholder and an officer and/or director of Apache Corporation, a Delaware corporation (the “Company”), understands that Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), Citigroup Global Markets Inc. (“Citigroup”), Goldman, Sachs & Co. (“Goldman Sachs”) and J.P. Morgan Securities Inc. (“JP Morgan” and together with Merrill Lynch, Citigroup and Goldman Sachs, as representatives of the several underwriters to be named in the within-mentioned Underwriting Agreement, the “Representatives”) propose to enter into an Underwriting Agreement (the “Underwriting Agreement”) with the Company providing for the public offering (the “Public Offering”) of the Company’s depository shares (the “Securities”), each representing a 1/20th interest in a share of 6.00% Mandatory Convertible Preferred Stock. In recognition of the benefit that such an offering will confer upon the undersigned as a stockholder and 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 each underwriter to be named in the Underwriting Agreement that, during the period beginning on the date hereof and ending on the date that is 90 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 Representatives, 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 of the Company’s common stock, par value \$0.625 per share (the “Common Stock”) or any securities convertible into or exchangeable or

exercisable for Common Stock, 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 Securities”), or exercise any right with respect to the registration of any of the Lock-up Securities, 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 Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer the Lock-Up Securities without the prior written consent of the Representatives provided that (1) the Representatives receive 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 such transfer shall not involve a disposition for value, (3) such transfers 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, and (4) the undersigned does not otherwise voluntarily effect any public filing or report regarding such transfers:

- (i) as a *bona fide* gift or gifts; or
- (ii) to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned (for purposes of this lock-up agreement, “immediate family” shall mean any relationship by blood, marriage or adoption, not more remote than first cousin); or
- (iii) as a distribution to limited partners or stockholders of the undersigned; or
- (iv) to the undersigned’s affiliates or to any investment fund or other entity controlled or managed by the undersigned.

Furthermore, the undersigned may sell shares of Common Stock 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 Exchange Commission, or otherwise and (ii) the undersigned does not otherwise voluntarily effect any public filing or report regarding such sales.

Notwithstanding the foregoing, if:

(1) during the last 17 days of the 90-day lock-up period, the Company issues an earnings release or material news or a material event relating to the Company occurs; or

(2) prior to the expiration of the 90-day lock-up period, the Company announces that it will release earnings results or becomes aware that material news or a material event will occur during the 16-day period beginning on the last day of the 90-day lock-up period,

the restrictions imposed by this lock-up agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless the Representatives waive, in writing, such extension.

The undersigned agrees that, prior to engaging in any transaction or taking any other action that is subject to the terms of this lock-up agreement during the period from the date of this lock-up agreement to and including the 34th day following the expiration of the initial 90-day lock-up period, it will give notice thereof to the Company and will not consummate such transaction or take any such action

unless it has received written confirmation from the Company that the 90-day lock-up period (as may have been extended pursuant to the previous paragraph) has expired.

It is understood that, if the Company notifies the Representatives that it does not intend to proceed with the Public Offering, if the Underwriting Agreement does not become effective by September 30, 2010 or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities, the undersigned will be released from his or her obligations under this lock-up agreement.

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 Securities except in compliance with the foregoing restrictions.

Very truly yours,

Signature: _____

Print Name: _____

**CERTIFICATE OF DESIGNATIONS,
PREFERENCES AND RIGHTS**

OF

6.00% MANDATORY CONVERTIBLE PREFERRED STOCK, SERIES D

OF

APACHE CORPORATION

**PURSUANT TO SECTION 151 OF THE GENERAL CORPORATION LAW
OF THE STATE OF DELAWARE**

Apache Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the “**Corporation**”), in accordance with the provisions of Sections 103 and 151 thereof, DOES HEREBY CERTIFY:

That pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Restated Certificate of Incorporation, as amended, of the Corporation, which authorizes the issuance by the Corporation of up to five million (5,000,000) shares of no par value preferred stock, which authority may be exercised by the Board of Directors of the Corporation pursuant to authority granted in the Bylaws of the Corporation, and which authority was delegated by the Board of Directors to a committee of the Board of Directors (the “**Committee**”) pursuant to resolutions adopted on July 20, 2010, the Committee on July 22, 2010 adopted the following resolution creating and providing for the issuance of a series of preferred stock of the Corporation:

RESOLVED: That, pursuant to the authority delegated by the Board of Directors of the Corporation, the Committee hereby creates a series of preferred stock of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, preferences and limitations thereof (in addition to the provisions set forth in the Restated Certificate of Incorporation of the Corporation, which are applicable to all series of the Corporation’s preferred stock) as follows:

6.00% Mandatory Convertible Preferred Stock, Series D

SECTION 1. *Series Designation and Number of Shares.* There is hereby created out of the authorized and unissued shares of Preferred Stock of the Corporation a series of Preferred Stock designated as the “6.00% Mandatory Convertible Preferred Stock, Series D” (the “**Series D Preferred Stock**”). The authorized number of shares of Series D Preferred Stock shall be 1,265,000. Each share of Series D Preferred Stock shall be identical in all respects to every other share of Series D Preferred Stock.

SECTION 2. *Definitions.* As used herein with respect to Series D Preferred Stock:

“**Agent Members**” shall have the meaning set forth in Section 22(b).

“**Applicable Market Value**” of the Common Stock means, except as provided in Section 12(e), the Average VWAP per share of Common Stock for the ten consecutive Trading Day period ending on, and including, the third Scheduled Trading Day immediately preceding the Mandatory Conversion Date.

“**Authorized Share Condition**” means that the Corporation has reserved for issuance, upon conversion of the Series D Preferred Stock, a sufficient number of Designated Shares greater than or equal to the product of the Share Cap and the number of shares of Series D Preferred Stock outstanding to allow for the conversion in full of all outstanding shares of Series D Preferred Stock; *provided* that on or after the Mandatory Conversion Date, the Authorized Share Condition shall be deemed to be satisfied if the Corporation has a sufficient number of Designated Shares to convert all outstanding shares of the Series D Preferred Stock and Fundamental Change Preferred Stock, as applicable.

“**Automatic Conversion Date**” means, in respect of an automatic conversion following the Mandatory Conversion Date pursuant to Section 6(e) or Section 6(g), the date on which such conversion is effected.

“**Average VWAP**” means, for any period, the average of the VWAP for each Trading Day in such period.

“**Board of Directors**” means the board of directors of the Corporation (or, with respect to any action to be taken by such board, any committee of such board duly authorized to take such action).

“**Business Day**” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental action to close.

“**Bylaws**” means the amended and restated bylaws of the Corporation, as they may be amended from time to time.

“**Certificate of Designations**” means this Certificate of Designations, Preferences and Rights of 6.00% Mandatory Convertible Preferred Stock, Series D, as it may be amended from time to time.

“**Certificated Series D Preferred Stock**” shall have the meaning set forth in Section 22(a).

“**Charter**” means the Corporation’s Restated Certificate of Incorporation, as it may be amended from time to time.

“**Clause A Distribution**” shall have the meaning set forth in Section 12(a)(iii).

“**Clause B Distribution**” shall have the meaning set forth in Section 12(a)(iii).

“**Clause C Distribution**” shall have the meaning set forth in Section 12(a)(iii).

“**close of business**” means 5:00 p.m. (New York City time).

“**Committee**” shall have the meaning set forth in the recitals.

“**Common Stock**” means the common stock, par value \$0.625 per share, of the Corporation.

“**Conversion Date**” shall have the meaning set forth in Section 9.

“**Conversion Rate**” shall, subject to adjustment pursuant to Section 12, be as follows:

(i) if the Applicable Market Value of the Common Stock is equal to or greater than \$109.12 (the “**Threshold Appreciation Price**”), then the Conversion Rate shall be 9.164 shares of Common Stock per share of Series D Preferred Stock (the “**Minimum Conversion Rate**”);

(ii) if the Applicable Market Value of the Common Stock is less than the Threshold Appreciation Price but greater than \$88.00 (the “**Initial Price**”), then the Conversion Rate shall be \$1,000, *divided by* the Applicable Market Value of the Common Stock; or

(iii) if the Applicable Market Value of the Common Stock is less than or equal to the Initial Price, then the Conversion Rate shall be 11.364 shares of Common Stock per share of Series D Preferred Stock (the “**Maximum Conversion Rate**”).

“**Corporate Trust Office**” means the principal corporate trust office of the Transfer Agent at which, at any particular time, its corporate trust business shall be administered.

“**Corporation**” shall have the meaning set forth in the recitals.

“**Current Market Price**” of the Common Stock on any day means the Average VWAP per share of the Common Stock for the ten consecutive Trading Day period ending on the earlier of the day in question and the day before the ex-date with respect to the issuance or distribution requiring such computation, appropriately adjusted to take into account the occurrence during such period of any event described in clauses (i) through (v) of Section 12. For purposes of this definition, “**ex-date**” means the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance or distribution in question from the Corporation or, if applicable, from the seller of the Common Stock (in the form of due bills or otherwise) as determined by such exchange or market.

“**Depository**” shall have the meaning set forth in Section 22(b).

“Designated Shares” mean, at any time, the aggregate number of authorized and unissued shares of Common Stock designated by the Corporation for, and reserved for issuance upon, conversion of the Series D Preferred Stock. If the Authorized Share Condition is not satisfied, the number of Designated Shares shall be:

- (i) increased, in the sole discretion of the Corporation, by any authorized and unissued shares of Common Stock not reserved for other corporate purposes;
- (ii) increased by any increases to the authorized and unissued shares of the Corporation (including any repurchased shares of Common Stock, which shall be deemed unissued for the purpose of calculating the Designated Shares), whether or not such shares are authorized for the specific purpose of increasing the Designated Shares; and
- (iii) decreased by the aggregate number of shares of Common Stock delivered by the Corporation in connection with any conversion of the Series D Preferred Stock (excluding, for the avoidance of doubt, shares of Common Stock delivered in lieu of dividends as set forth in Section 5).

“Dividend Payment Date” means the 1st calendar day of February, May, August and November of each year.

“Dividend Period” means the period commencing on, and including, a Dividend Payment Date (or if no Dividend Payment Date has occurred, commencing on, and including, the Issue Date), and ending on, and including, the day immediately preceding the next succeeding Dividend Payment Date.

“Dividend Reference Period” means (i) in the case of a payment of dividends upon a Mandatory Conversion on the Mandatory Conversion Date, the ten consecutive Trading Days ending on, and including, the second Scheduled Trading Day immediately preceding the Mandatory Conversion Date; (ii) in the case of a payment of dividends upon an Optional Conversion, the ten consecutive Trading Days commencing on, and including, the third Trading Day immediately following the date on which the Corporation receives a notice of conversion from the applicable Holder; and (iii) in the case of a payment of dividends upon a Fundamental Change Conversion, the ten consecutive Trading Days ending on, and including, the Scheduled Trading Day immediately preceding the Effective Date.

“Dividend Threshold Amount” means a regular quarterly cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of Common Stock does not exceed \$0.15 in any fiscal quarter, subject to adjustment on an inversely proportional basis whenever the Fixed Conversion Rates are adjusted, but no adjustment will be made to the Dividend Threshold Amount for any adjustment made to the Fixed Conversion Rates pursuant to Section 12(a)(iv).

“DTC” means The Depository Trust Company.

“**Effective Date**” means, with respect to a Fundamental Change, the date upon which a Fundamental Change becomes effective.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exchange Property**” shall have the meaning set forth in Section 12(e).

“**Expiration Date**” shall have the meaning set forth in Section 12(a)(v).

“**Expiration Time**” shall have the meaning set forth in Section 12(a)(v).

“**Final Conversion Rate**” shall have the meaning set forth in Section 3(d).

“**Fixed Conversion Rates**” means, collectively, the Maximum Conversion Rate, the Minimum Conversion Rate, the Final Conversion Rate and the Fundamental Change Conversion Rate.

“**Fundamental Change**” shall be deemed to have occurred if any of the following occurs:

(i) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Common Stock representing more than 50% of the voting power of the Common Stock;

(ii) the Corporation is involved in a consolidation with or merger into any other Person, or any merger of another Person into the Corporation, or any other similar transaction or series of related transactions pursuant to which the Common Stock will be converted into cash, securities or other property or the Corporation sells, leases or transfers in one transaction or a series of related transactions all or substantially all of the property and assets of the Corporation and its Subsidiaries; *provided, however*, that a Fundamental Change shall not be deemed to have occurred if at least 90% of the consideration received by holders of the Common Stock in the transaction or transactions consists of shares of common stock that are listed on the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market and as a result of this transaction or transactions the Series D Preferred Stock becomes convertible into such consideration as set forth herein;

(iii) the Common Stock (or any other security into which the Series D Preferred Stock becomes convertible in connection with a Reorganization Event) ceases to be listed or quoted on the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market; or

(iv) the stockholders of the Corporation approve any plan for the liquidation, dissolution or termination of the Corporation.

“**Fundamental Change Conversion**” shall have the meaning set forth in Section 8(a).

“**Fundamental Change Conversion Date**” shall have the meaning set forth in Section 8(c).

“**Fundamental Change Company Notice**” shall have the meaning set forth in Section 8(b).

“**Fundamental Change Conversion Period**” shall have the meaning set forth in Section 8(a).

“**Fundamental Change Conversion Rate**” means, for any Fundamental Change Conversion, a number of shares of Common Stock (or units of Exchange Property) determined using the table below based on the applicable Effective Date and Stock Price for such Fundamental Change, as described below:

Stock Price on Effective Date

Effective Date	\$20.00	\$40.00	\$60.00	\$75.00	\$80.00	\$88.00	\$95.00	\$100.00	\$110.00	\$125.00	\$150.00	\$200.00	\$250.00	\$300.00
July 28, 2010	18.890	14.786	13.026	12.178	11.952	11.636	11.400	11.250	10.992	10.688	10.336	9.946	9.746	9.626
November 1, 2010	18.310	14.540	12.886	12.066	11.844	11.534	11.302	11.154	10.900	10.604	10.260	9.888	9.702	9.592
February 1, 2011	17.716	14.284	12.740	11.950	11.734	11.428	11.200	11.054	10.806	10.514	10.180	9.828	9.654	9.554
May 1, 2011	17.114	14.022	12.596	11.834	11.622	11.324	11.098	10.954	10.708	10.420	10.098	9.764	9.606	9.516
August 1, 2011	16.508	13.760	12.456	11.724	11.516	11.222	10.998	10.854	10.610	10.326	10.012	9.700	9.558	9.478
November 1, 2011	15.896	13.494	12.322	11.620	11.416	11.122	10.898	10.756	10.510	10.228	9.924	9.636	9.510	9.440
February 1, 2012	15.276	13.224	12.192	11.522	11.320	11.028	10.800	10.656	10.408	10.128	9.832	9.568	9.462	9.402
May 1, 2012	14.652	12.944	12.068	11.434	11.234	10.938	10.706	10.558	10.304	10.020	9.734	9.500	9.412	9.364
August 1, 2012	14.022	12.656	11.952	11.362	11.162	10.858	10.616	10.460	10.194	9.904	9.630	9.432	9.364	9.326
November 1, 2012	13.386	12.358	11.842	11.312	11.112	10.794	10.532	10.364	10.076	9.774	9.516	9.364	9.314	9.286
February 1, 2013	12.744	12.046	11.732	11.302	11.104	10.760	10.464	10.268	9.940	9.618	9.392	9.298	9.268	9.248
May 1, 2013	12.098	11.728	11.592	11.348	11.172	10.798	10.424	10.170	9.754	9.416	9.270	9.234	9.220	9.208
August 1, 2013	11.364	11.364	11.364	11.364	11.364	11.364	10.526	10.000	9.164	9.164	9.164	9.164	9.164	9.164

The Stock Prices set forth in the column headers shall be adjusted as of any date on which the Fixed Conversion Rates are adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment *multiplied by* a fraction, the numerator of which is the Minimum Conversion Rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the Minimum Conversion Rate as so adjusted. Each of the Fundamental Change Conversion Rates in the table shall be subject to adjustment in the same manner as each Fixed Conversion Rate pursuant to Section 12.

The exact Stock Price and Effective Date may not be set forth in the table, in which case:

(i) if the Stock Price is between two Stock Price amounts on the table or the Effective Date is between two dates on the table, the Fundamental Change Conversion Rate shall be determined by straight-line interpolation between the Fundamental Change Conversion Rates set forth for the higher and lower Stock Price amounts and the two dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is in excess of \$300.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to the immediately preceding paragraph), then the Fundamental Change

Conversion Rate shall be the Minimum Conversion Rate, subject to adjustment pursuant to Section 12; and

(iii) if the Stock Price is less than \$20.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to the immediately preceding paragraph) (the “**Minimum Stock Price**”), then the Fundamental Change Conversion Rate shall be determined (a) as if the Stock Price equaled the Minimum Stock Price and (b), if the Effective Date is between two dates on the table, using straight-line interpolation.

“**Fundamental Change Market Value**” shall have the meaning set forth in the definition of Stock Price.

“**Fundamental Change Preferred Stock**” shall have the meaning set forth in Section 8(g).

“**Global Preferred Share**” shall have the meaning set forth in Section 22(b).

“**Global Shares Legend**” shall have the meaning set forth in Section 22(b).

“**Holder**” means the Person in whose name the shares of the Series D Preferred Stock are registered, which may be treated by the Corporation and the Transfer Agent as the absolute owner of the shares of Series D Preferred Stock for all purposes, including, without limitation, for purposes of making payment and settling conversions to the fullest extent permitted by law.

“**Initial Liquidation Preference**” means \$1,000 per share of Series D Preferred Stock.

“**Initial Price**” shall have the meaning set forth in the definition of Conversion Rate.

“**Issue Date**” shall mean July 28, 2010, which is the original issue date of the Series D Preferred Stock.

“**Junior Stock**” means the Common Stock and, if issued, the Series A Junior Participating Preferred Stock, no par value, and each other class of capital stock or series of Preferred Stock of the Corporation established after the Issue Date, the terms of which do not expressly provide that such class or series ranks senior to or on a parity with the Series D Preferred Stock as to dividend rights and/or rights upon liquidation, dissolution or winding up of the Corporation.

“**Liquidation Preference**” has the meaning set forth in Section 13.

“**Mandatory Conversion**” means any conversion pursuant to Section 6(a), Section 6(c)(iii) or Section 6(e).

“**Mandatory Conversion Date**” means August 1, 2013.

“Market Disruption Event” means any of the following events has occurred: (i) any suspension of, or limitation imposed on, trading by the New York Stock Exchange during any period or periods aggregating one half-hour or longer and whether by reason of movements in price exceeding limits permitted by the New York Stock Exchange or otherwise relating to the Common Stock (or any other security into which the Series D Preferred Stock becomes convertible in connection with any Reorganization Event) or in futures or option contracts relating to the Common Stock (or such other security) on the relevant exchange or quotation system; (ii) any event (other than a failure to open or a closure as described below) that disrupts or impairs the ability of market participants during any period or periods aggregating one half-hour or longer in general to effect transactions in, or obtain market values for, the Common Stock (or any other security into which the Series D Preferred Stock becomes convertible in connection with any Reorganization Event) on the New York Stock Exchange or futures or options contracts relating to the Common Stock (or such other security) on any relevant exchange or quotation system; or (iii) the failure to open of the exchange or quotation system on which futures or options contracts relating to the Common Stock (or any other security into which the Series D Preferred Stock becomes convertible in connection with any Reorganization Event) are traded or the closure of such exchange or quotation system prior to its respective scheduled closing time for the regular trading session on such day (without regard to after-hours or other trading outside the regular trading session hours) unless such earlier closing time is announced by such exchange or quotation system at least one hour prior to the earlier of the actual closing time for the regular trading session on such day and the submission deadline for orders to be entered into such exchange or quotation system for execution at the actual closing time on such day. For the purposes of determining a Market Disruption Event, if the Common Stock (or any other security into which the Series D Preferred Stock becomes convertible in connection with any Reorganization Event) is not listed on the New York Stock Exchange, the term “New York Stock Exchange” in the definition of Market Disruption Event shall be deemed to be replaced by the principal national securities exchange on which the Common Stock (or such other security) is listed for trading.

“Maximum Conversion Rate” shall have the meaning set forth in the definition of Conversion Rate.

“Merger Common Stock” shall have the meaning set forth in Section 12(f)(i).

“Merger Valuation Percentage” shall have the meaning set forth in Section 12(f)(iv).

“Minimum Conversion Rate” shall have the meaning set forth in the definition of Conversion Rate.

“Minimum Stock Price” shall have the meaning set forth in the definition of Fundamental Change Conversion Rate.

“Nonpayment” shall have the meaning set forth in Section 16(b).

“**Non-U.S. Holder**” means a Holder that is not treated as a United States person for U.S. federal income tax purposes as defined under Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended from time to time.

“**Officer**” means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, any Vice President, the Treasurer, or the Secretary of the Corporation.

“**Officers’ Certificate**” means a certificate of the Corporation, signed by a duly authorized Officer and the duly authorized principal financial or accounting officer of the Corporation.

“**open of business**” means 9:00 a.m. (New York City time).

“**Optional Conversion**” shall have the meaning set forth in Section 7(a).

“**Optional Conversion Date**” shall have the meaning set forth in Section 7(e).

“**Parity Stock**” means any class of capital stock or series of Preferred Stock of the Corporation established after the Issue Date, the terms of which expressly provide that such class or series will rank equally with the Series D Preferred Stock as to dividend rights and/or rights upon liquidation, dissolution or winding up of the Corporation, in each case without regard to whether dividends accrue cumulatively or non-cumulatively.

“**Person**” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

“**Prorated Portion**” means, with respect to any Conversion Date, the total number of Designated Shares on such Conversion Date *divided by* the product of (i) the applicable Conversion Rate (or, in the case of a Fundamental Change Conversion, the Fundamental Change Conversion Rate) on such Conversion Date and (ii) the total number of shares of Series D Preferred Stock submitted for conversion for all Holders on such Conversion Date (or in the case of a Mandatory Conversion, the total number of shares of Series D Preferred Stock outstanding).

“**Preferred Director**” or “**Preferred Directors**” shall have the meaning set forth in Section 16(b).

“**Preferred Stock**” means any and all series of preferred stock of the Corporation, including, without limitation, the Series D Preferred Stock.

“**Purchased Shares**” shall have the meaning set forth in Section 12(a)(v).

“**Record Date**” means, for purpose of a conversion rate adjustment pursuant to Section 12, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination

of cash, securities or other property, the date fixed for determination of holders of the Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

“**Record Holders**” means, as to any day, the Holders of record of the Series D Preferred Stock as they appear on the stock register of the Corporation at the close of business on such day.

“**Registrar**” means the Transfer Agent.

“**Regular Record Date**” means with respect to payment of dividends on the Series D Preferred Stock, the 15th calendar day of the month immediately preceding the month in which the relevant Dividend Payment Date falls or such other record date fixed by the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date, but only to the extent a dividend has been declared to be payable on such Dividend Payment Date.

“**Reorganization Event**” shall have the meaning set forth in Section 12(e).

“**Restricted Payment**” shall have the meaning set forth in Section 4(d).

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day, except that if the Common Stock is not listed on a national securities exchange, “**Scheduled Trading Day**” means a Business Day.

“**Series D Preferred Stock**” shall have the meaning set forth in Section 1.

“**Share Cap**” shall have the meaning set forth in Section 5(g).

“**Spin-Off**” shall have the meaning set forth in Section 12(a)(iii).

“**Stock Price**” means (i) in the case of a Fundamental Change described in clause (ii) of the definition of Fundamental Change in which the holders of Common Stock receive only cash in the Fundamental Change, the cash amount paid per share of Common Stock, and (ii) in the case of any other Fundamental Change, the Average VWAP per share of the Common Stock over the five Trading Day period ending on, and including, the Scheduled Trading Day immediately preceding the applicable Effective Date (the “**Fundamental Change Market Value**”).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person, (ii) such Person and one or more Subsidiaries of such Person or (iii) one or more Subsidiaries of the Corporation.

“**Threshold Appreciation Price**” shall have the meaning set forth in the definition of Conversion Rate.

“**Trading Day**” means any day on which (i) there is no Market Disruption Event and (ii) the New York Stock Exchange is open for trading, or, if the Common Stock (or any other security into which the Series D Preferred Stock becomes convertible in connection with any Reorganization Event) is not listed on the New York Stock Exchange, any day on which the principal national securities exchange on which the Common Stock (or such other security) is listed is open for trading, or, if the Common Stock (or such other security) is not listed on a national securities exchange, any Business Day. A “**Trading Day**” only includes those days that have a scheduled open time of 9:30 a.m. (New York City time) and a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

“**Transfer Agent**” means Wells Fargo Bank, N.A. or any successor transfer agent appointed pursuant to Section 21.

“**Trigger Event**” shall have the meaning set forth in Section 12(a)(iii).

“**unit of Exchange Property**” shall have the meaning set forth in Section 12(e)

“**VWAP**” (i) per share of Common Stock means, on any Trading Day, the price per share of the Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg (or any successor service) page APA <Equity> AQR (or its equivalent successor if such page is not available) in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day; or, if such price is not available, the market value per share of Common Stock on such Trading Day as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Corporation for such purpose and (ii) per share of common stock (other than the Common Stock) traded on a U.S. national securities exchange, means, on any Trading Day, the price per share of such common stock as displayed under the heading “Bloomberg VWAP” on the relevant Bloomberg page (or any successor service) in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day; or if such price is not available, the market value per share of such common stock on such Trading Day as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Corporation for such purpose.

SECTION 3. *Authorized Share Condition.* (a) The Corporation has reserved 28,750,920 shares of Common Stock as the Designated Shares, and the Authorized Share Condition is hereby satisfied as of the Issue Date.

(b) If the Authorized Share Condition is not satisfied by August 1, 2011, then from such date to, but excluding, the date on which the Authorized Share Condition is satisfied, the dividend rate at which the Series D Preferred Stock accrues and accumulates shall increase by 2% to 8% per annum on the liquidation amount of \$1,000 per share of Series D Preferred Stock.

In addition, until the Authorized Share Condition is satisfied, the dividend rate shall increase by an additional 1% on each six month anniversary of the 365th day after the Issue Date, to a maximum rate equal to 6% plus 6% per annum. Upon satisfaction of the Authorized Share Condition, the dividend rate shall reset to the original rate of 6% per annum.

(c) If the Authorized Share Condition is not satisfied on the Mandatory Conversion Date, and the number of Designated Shares at such time is greater than zero, shares of Series D Preferred Stock will be automatically converted on a *pro rata* basis in accordance with Section 6(c)(iii) and Section 6(d). If the Authorized Share Condition is not satisfied and there are no Designated Shares on the Mandatory Conversion Date, all outstanding shares of Series D Preferred Stock shall remain outstanding as set forth in Section 6(c)(iv) and continue to accumulate dividends as set forth herein.

(d) Any Series D Preferred Stock not converted on the Mandatory Conversion Date as a result of the foregoing limitation shall remain outstanding. Effective as of the Mandatory Conversion Date, the Conversion Rate for all such shares shall be fixed as the conversion rate per share (the “**Final Conversion Rate**”) that such outstanding Series D Preferred Stock would have otherwise been converted into in accordance with Section 6(a). In addition, from and after the Mandatory Conversion Date, each outstanding share of Series D Preferred Stock shall:

(i) accrue and cumulate dividends at the rate of 6% plus 6% per annum on the liquidation amount of \$1,000 per share of Series D Preferred Stock payable in cash quarterly, to the extent the Corporation has legally available funds to pay dividends and the Board of Directors declares a dividend payable, on each Dividend Payment Date in the same manner as set forth in Section 4;

(ii) receive and participate in all dividends or distributions (including, but not limited to, regular quarterly dividends) paid or made in respect of the Common Stock, whether in the form of cash or securities or any other form of property or assets at the same time and upon the same terms as a holder of a number of shares of Common stock equal to the Final Conversion Rate; and

(iii) be entitled to vote a number of votes equal to the Final Conversion Rate per share of Series D Preferred Stock for the vote or consent on all matters submitted to a vote of the holders of Common Stock and shall vote together with the holders of Common Stock as one class on such matters (except for the approval required to satisfy the Authorized Share Condition).

Any dividend specified under Section 3(d)(ii) shall be payable or deliverable on the date fixed for the related payment or delivery of the dividend or distribution on the shares of Common Stock to Record Holders of the outstanding Series D Preferred Stock on the record date fixed for the related dividend or distribution to holders of the shares of Common Stock.

(e) The Corporation shall issue a press release and send written notice, by first-class mail, postage prepaid, to the Record Holders as they appear on the stock register of the

Corporation promptly each time the number of Designated Shares is increased until the Authorized Share Condition is satisfied. Once the Authorized Share Condition is met, the Corporation shall use its best efforts to ensure that the Authorized Share Condition continues to be met and shall not take any action that would result in the Authorized Share Condition not being met.

SECTION 4. *Dividends.* (a) Holders of shares of outstanding Series D Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds of the Corporation lawfully available therefor, cumulative dividends at the rate per annum of 6% per share on the Initial Liquidation Preference (equivalent to \$60 per annum per share), payable quarterly on each Dividend Payment Date, commencing on November 1, 2010, in cash or, in the case of the Dividend Payment Date occurring on August 1, 2013, in cash, shares of Common Stock or a combination thereof, at the Corporation's election and subject to the Share Cap, in accordance with Section 5. Dividends shall accumulate from the most recent date as to which dividends shall have been paid or, if no dividends have been paid, from the Issue Date, whether or not in any Dividend Period(s) there have been funds of the Corporation lawfully available for the payment of such dividends and shall accrue, whether or not earned or declared, from and after the Issue Date. Dividends shall be payable on a Dividend Payment Date to Holders that are Record Holders with respect to such Dividend Payment Date, but only to the extent a dividend has been declared to be payable on such Dividend Payment Date, except that dividends payable on the Mandatory Conversion Date shall be payable to the Holders presenting the Series D Preferred Stock for conversion. If any Dividend Payment Date is not a Business Day, the dividend payable on such date shall be paid on the next Business Day without any adjustment, interest or other penalty in respect of such delay. Accumulations of dividends on shares of Series D Preferred Stock shall not bear interest. Dividends payable for any period other than a full Dividend Period (based on the number of days elapsed during such Dividend Period) shall be computed on the basis of days elapsed over a 360-day year consisting of twelve 30-day months.

(b) No dividend shall be declared or paid upon, or any sum set apart for the payment of dividends upon, any outstanding share of the Series D Preferred Stock with respect to any Dividend Period unless all dividends for all preceding Dividend Periods shall have been declared and paid or declared and a sufficient sum has been set apart for the payment of such dividends, upon all outstanding shares of Series D Preferred Stock.

(c) Holders of shares of Series D Preferred Stock shall not be entitled to any dividends on the Series D Preferred Stock, whether payable in cash, Common Stock or any combination thereof, in excess of full cumulative dividends. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series D Preferred Stock which may be in arrears.

(d) So long as any share of Series D Preferred Stock remains outstanding (including after the Mandatory Conversion Date), no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to this Section 4(d) in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased,

redeemed or otherwise acquired for consideration by the Corporation or any of its Subsidiaries (collectively, a “**Restricted Payment**”) unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period, on all outstanding shares of Series D Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the Holders of shares of Series D Preferred Stock on the applicable Regular Record Date). In addition and notwithstanding the forgoing, if any shares of Series D Preferred Stock or Fundamental Change Preferred Stock are outstanding on and after the Mandatory Conversion Date, no Restricted Payment shall be made even if the Corporation has made timely payment of dividends on all outstanding Series D Preferred Stock or Fundamental Change Preferred Stock, as applicable. The foregoing limitations shall not apply to:

- (i) any dividends or distributions of rights or Junior Stock in connection with a shareholders’ rights plan or any redemption or repurchase of rights pursuant to any shareholders’ rights plan;
- (ii) the acquisition by the Corporation or any of its Subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other Persons (other than for the beneficial ownership by the Corporation or any of its Subsidiaries), including as trustees or custodians; and
- (iii) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock and, in each case, the payment of cash solely in lieu of fractional shares.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the Holders thereof on the applicable Regular Record Date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon the Series D Preferred Stock and any shares of Parity Stock, all dividends declared on Series D Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared and paid *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Series D Preferred Stock and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors out of lawfully available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Corporation shall provide written notice to the Holders of Series D Preferred Stock prior to such Dividend Payment Date.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors may be declared and paid on any securities of the Corporation, including Common Stock and other Junior Stock, from time to time out of any funds lawfully available for such payment, and Holders shall not be entitled to participate in any such dividends.

SECTION 5. *Method of Payment of Dividends.* (a) All dividends on the Series D Preferred Stock, whether or not for a current Dividend Period or any prior Dividend Period, paid prior to any conversion of the Series D Preferred Stock shall be made in cash.

(b) Subject to clause (d) below, All dividends (or any portion of any dividend) on the Series D Preferred Stock, including accrued and unpaid dividends, payable upon a Mandatory Conversion on the Mandatory Conversion Date pursuant to Section 6(a), an Optional Conversion or a Fundamental Change Conversion may, in the Corporation's sole discretion, be paid:

(i) in cash;

(ii) by delivery of shares of Common Stock; or

(iii) through payment or delivery, as the case may be, of any combination of cash and Common Stock;

provided that in the case of a Fundamental Change Conversion that is a Reorganization Event, dividends otherwise payable in shares of Common Stock may be paid by delivery of units of Exchange Property in accordance with Section 12(e); and *provided further* that if the Board of Directors may not lawfully authorize payment of all or any portion of such accrued and unpaid dividends in cash, it shall authorize payment of such dividends in shares of Common Stock or units of Exchange Property, as the case may be, if lawfully permitted to do so.

(c) If the Corporation elects to pay any dividend or portion thereof in shares of Common Stock, such shares shall be valued for such purpose at 97% of the Average VWAP per share of Common Stock for the ten Trading Days of the applicable Dividend Reference Period. If the Corporation elects to pay any dividend or portion thereof in units of Exchange Property, the value of such units shall be determined in accordance with Section 12(e).

(d) So long as any Series D Preferred Stock remains outstanding on and after the Mandatory Conversion Date, then, with respect to such outstanding Series D Preferred Stock, (i) the quarterly dividend otherwise payable on the Mandatory Conversion Date shall be payable in cash only and (ii) the quarterly dividends (at the increased dividend rate in accordance with Section 3(d)(i)) following such date shall only be payable in cash. In addition to the Common Stock issuable upon automatic conversion of such Series D Preferred Stock on and after the Mandatory Conversion Date pursuant to Section 6(c)(iii), Section 6(e) or Section 6(g), the Corporation shall pay cash in an amount equal to all accrued and unpaid dividends on the Series D Preferred Stock, whether or not declared prior to that date, for the then-current Dividend Period (or portion thereof) ending on the relevant Conversion Date and all prior Dividend

Periods (other than previously declared dividends on such Series D Preferred Stock that were paid to Record Holders as of a prior date) as long as the Corporation is legally permitted to pay dividends at such time.

(e) If the Corporation elects to pay any dividend or portion thereof in shares of Common Stock or units of Exchange Property in accordance with Section 5(b):

(i) in the case of a payment of dividends upon a Mandatory Conversion on the Mandatory Conversion Date pursuant to Section 6(a), the Corporation shall give the Holders notice of any such election and the portion of such payment that will be made in Common Stock no later than ten Scheduled Trading Days prior to the Mandatory Conversion Date, and the Corporation shall deliver shares of the Common Stock and pay cash, if applicable, in respect of such payment on the Mandatory Conversion Date;

(ii) in the case of a payment of dividends upon an Optional Conversion, the Corporation shall give each converting Holder notice of any such election and the portion of such payment that will be made in Common Stock no later than two Trading Days after the Corporation receives notice of conversion from such Holder, and the Corporation shall deliver shares of the Common Stock and pay cash, if applicable, in respect of such payment no later than the ninth Trading Day after the applicable Optional Conversion Date, subject to the provisions for accrued dividends as set forth in Section 7(f); and

(iii) in the case of a payment of dividends upon a Fundamental Change Conversion, the Corporation shall give each converting Holder notice of any such election and the portion of such payment that will be made in Common Stock or units of Exchange Property, as the case may be, in the Fundamental Change Company Notice and the Corporation shall deliver shares of the Common Stock or units of Exchange Property, as the case may be, and pay cash, if applicable, in respect of such payment on the third Business Day following the Conversion Date in respect of such Fundamental Change Conversion.

If the Corporation does not provide notice of its election to pay any dividend, or a portion thereof, upon the conversion of the Series D Preferred Stock pursuant to this Section 5(e) through delivery of shares of Common Stock or units of Exchange Property, as the case may be, the Corporation shall pay such dividend entirely in cash.

(f) In respect of any shares of Common Stock issued or Exchange Property delivered in payment or partial payment of a dividend to a non-U.S. Holder, the Corporation may withhold and sell (or direct the Transfer Agent or any paying agent on behalf of the Corporation to withhold and sell) such number of shares of Common Stock or units of Exchange Property as the Corporation deems necessary to result in proceeds from such sale (after deduction of customary commissions, which shall be for the account of such non-U.S. Holder) to pay all or any part of any U.S. withholding tax obligation that the Corporation has (as determined by it in its sole

discretion) in respect of the payment or partial payment of such dividend of shares of Common Stock or units of Exchange Property to such non-U.S. Holder.

(g) Notwithstanding the foregoing, in no event shall the number of shares of Common Stock delivered upon conversion of the Series D Preferred Stock, including dividends paid in shares of Common Stock pursuant to this Section 5, Section 7(f) or Section 8(a)(ii), exceed an amount per share equal to the product of (i) two and (ii) the Maximum Conversion Rate, subject to adjustment in the same manner as each Fixed Conversion Rate pursuant to Section 12 (the “**Share Cap**”). To the extent that the Corporation delivers the maximum number of whole shares of Common Stock equal to the Share Cap on the Series D Preferred Stock with respect to which the Corporation has notified the Holder that such dividends would be paid in shares of Common Stock in accordance with Section 5(e), the Corporation shall be deemed to have paid in full all accrued and unpaid dividends on such Series D Preferred Stock. However, in the Corporation’s sole discretion, the Corporation may elect to pay any amount above the Share Cap that would otherwise be payable in cash to the extent the Corporation has lawfully available funds to do so.

SECTION 6. *Mandatory Conversion.* (a) Provided the Authorized Share Condition has been satisfied on the Mandatory Conversion Date as set forth in Section 3, each share of Series D Preferred Stock, unless previously converted in an Optional Conversion or a Fundamental Change Conversion, shall automatically convert on the Mandatory Conversion Date into a number of shares of Common Stock equal to the Conversion Rate.

(b) Subject to clause (c) below, the Holders of Series D Preferred Stock on the Mandatory Conversion Date shall have the right to receive an amount equal to all accrued and unpaid dividends on the Series D Preferred Stock (in cash, Common Stock or a combination thereof, at the Corporation’s election and subject to the Share Cap, as provided in Section 5), whether or not declared prior to that date, for the Dividend Period ending immediately prior to the Mandatory Conversion Date and all prior Dividend Periods (other than previously declared dividends on the Series D Preferred Stock that were paid to Record Holders as of a prior date), so long as the Corporation is lawfully permitted to pay such dividends at such time.

(c) If the Authorized Share Condition is not satisfied on the Mandatory Conversion Date, then,

(i) the quarterly dividend otherwise payable on the Mandatory Conversion Date for the Dividend Period ending on the day immediately preceding such date shall be payable in cash only (and only to the extent the Corporation has legally available funds and the Board of Directors declared a dividend to be payable on such date);

(ii) subject to clause (h) below, the Corporation shall not have any obligation to pay all accumulated and accrued and unpaid dividends on the Mandatory Conversion Date, whether or not declared prior to that date, as set forth in Section 4;

(iii) if the Corporation has any Designated Shares on the Mandatory Conversion Date, for each Holder of Series D Preferred Stock, a number of shares of Series D Preferred Stock (rounded down to the nearest whole share of Series D Preferred Stock) equal to the Prorated Portion *multiplied by* the total number of shares of Series D Preferred Stock held by such Holder shall automatically convert on such date into shares of Common Stock at the Conversion Rate;

(iv) any Series D Preferred Stock not converted on such date shall remain outstanding and shall be convertible at the Final Conversion Rate and with the increased dividend rate and the additional rights as set forth in Section 3(d); and

(v) the quarterly dividends (at the increased dividend rate in accordance with Section 3(d)(i)) following such date shall only be payable in cash as set forth in Section 5(d).

(d) Notwithstanding the forgoing and with respect to any conversion of Series D Preferred Stock on a *pro rata* basis pursuant to Section 6(c)(iii), Section 6(e), Section 7(h) or Section 8(g), if such conversion is not practical or cannot be implemented under DTC's then-existing procedures, the Corporation shall select shares of Series D Preferred Stock to be converted (in whole shares) by lot or by another method that the Board of Directors considers fair and appropriate so long as such method is not prohibited by the rules of any stock exchange or quotation system on which shares of Series D Preferred Stock may then be traded or quoted.

(e) Upon any increase of the Designated Shares announced by the Corporation following the Mandatory Conversion Date, for each Holder of Series D Preferred Stock, a Prorated Portion of the total number of shares of Series D Preferred Stock held by such Holder (rounded down to the nearest whole share of Series D Preferred Stock) shall automatically convert into shares of Common Stock at the Final Conversion Rate. Any remaining Series D Preferred Stock will continue to convert on a *pro rata* basis until all outstanding shares of Series D Preferred Stock are converted.

(f) In connection with any automatic conversion of Series D Preferred Stock pursuant to Section 6(c)(iii) or Section 6(e), the Corporation shall issue and deliver to each Holder or its designee a new certificate or certificates representing the number of shares of Series D Preferred Stock that have not been converted in exchange for the certificate or certificates of Series D Preferred Stock held by such Holder prior to such automatic conversion.

(g) Upon satisfaction of the Authorized Share Condition following the Mandatory Conversion Date, each Series D Preferred Stock shall automatically convert into shares of Common Stock at the Final Conversion Rate.

(h) In addition to the shares of Common Stock issuable upon automatic conversion of Series D Preferred Stock on or after the Mandatory Conversion Date pursuant to Section 6(c)(iii), Section 6(e) or Section 6(g), the Corporation shall pay cash in an amount equal to all accrued and unpaid dividends on such Series D Preferred Stock, whether or not declared prior to that date, for

the then-current Dividend Period (or portion thereof) ending on the relevant Conversion Date and all prior Dividend Periods (other than previously declared dividends on such Series D Preferred Stock that were paid to Holders of record as of a prior date) as long as the Corporation is legally permitted to pay dividends at such time.

(i) If shares of Series D Preferred Stock and Fundamental Change Preferred Stock are both outstanding on or after the Mandatory Conversion Date, the Designated Shares shall be used first to satisfy conversion of the Fundamental Change Preferred Stock until all outstanding shares of Fundamental Change Preferred Stock are converted in accordance with Section 8(g). If the remaining Designated Shares are not sufficient to convert all outstanding shares of Series D Preferred Stock, the outstanding shares of Series D Preferred Stock shall be converted on a *pro rata* basis in accordance with Section 6(c)(iii) or Section 6(e).

(j) Each of the Fixed Conversion Rates, the Initial Price, the Threshold Appreciation Price and the Applicable Market Value shall be subject to adjustment in accordance with the provisions of Section 12.

SECTION 7. *Optional Conversion at the Option of the Holder.* (a) Other than during the Fundamental Change Conversion Period and as long as no shares of Fundamental Change Preferred Stock are outstanding, shares of the Series D Preferred Stock are convertible, in whole or in part, at the option of the Holder thereof ("**Optional Conversion**") at any time prior to July 15, 2013, into shares of Common Stock at the Minimum Conversion Rate, subject to adjustment in accordance with Section 12.

(b) Any written notice of conversion pursuant to this Section 7 shall be duly executed by the Holder, and specify:

(i) the number of shares of Series D Preferred Stock to be converted;

(ii) the name(s) in which such Holder desires the shares of Common Stock issuable upon conversion to be registered; and

(iii) any other transfer forms, tax forms or other relevant documentation required and specified by the Transfer Agent, if necessary, to effect the conversion.

(c) If specified by the Holder in the notice of conversion that shares of Common Stock issuable upon conversion of the Series D Preferred Stock shall be issued to a Person other than the Holder surrendering the shares of Series D Preferred Stock being converted, then the Holder shall pay or cause to be paid any transfer or similar taxes payable in connection with the shares of Common Stock so issued.

(d) Upon receipt by the Transfer Agent of a completed and duly executed notice of conversion as set forth in Section 7(b), compliance with Section 7(c), if applicable, receipt of funds as set forth in Section 7(g), if applicable, and surrender of a certificate representing share(s) of Series D Preferred Stock to be converted (if held in certificated form), the Corporation shall,

on the third Business Day after the Optional Conversion Date (except in the case of shares of Common Stock issued pursuant to Section 7(f)), issue and shall instruct the Transfer Agent to register the number of shares of Common Stock to which such Holder shall be entitled upon conversion in the name(s) specified by such Holder in the notice of conversion. In the event that there shall have been surrendered a certificate or certificates representing shares of Series D Preferred Stock, only part of which are to be converted either at the option of the Holder thereof or as provided in Section 7(h), the Corporation shall issue and deliver to such Holder or such Holder's designee in the manner provided in the immediately preceding sentence a new certificate or certificates representing the number of shares of Series D Preferred Stock that shall not have been converted.

(e) The issuance by the Corporation of shares of Common Stock upon a conversion of shares of Series D Preferred Stock at the Minimum Conversion Rate in accordance with the terms hereof shall be deemed effective immediately prior to the close of business on the day (the "**Optional Conversion Date**") of receipt by the Transfer Agent of the notice of conversion and other documents, if any, set forth in Section 7(b), compliance with Section 7(c), if applicable, receipt of funds as set forth in Section 7(g), if applicable, and the surrender by such Holder or such Holder's designee of the certificate or certificates representing the shares of Series D Preferred Stock to be converted (if held in certificated form), duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto).

(f) In addition to the number of shares of Common Stock issuable at the Minimum Conversion Rate upon conversion of each share of Series D Preferred Stock at the option of the Holder on the Optional Conversion Date, the Corporation shall pay on the third Business Day after the Optional Conversion Date (in cash, Common Stock or a combination thereof, at its election, as provided in Section 5), an amount equal to all accrued and unpaid dividends on such converted shares of Series D Preferred Stock, whether or not declared prior to that date (other than previously declared dividends on the Series D Preferred Stock that were paid to Record Holders as of a prior date), for all Dividend Periods ending on or prior to the Dividend Payment Date immediately preceding the Optional Conversion Date, subject to Section 7(g) and the Share Cap and so long as the Corporation is then lawfully permitted to pay such dividends.

(g) Notwithstanding Section 7(f), if the Conversion Date for any Optional Conversion occurs during the period from the close of business on a Regular Record Date for any declared dividend to the open of business on the immediately following Dividend Payment Date:

(i) the Corporation shall pay such dividend on the Dividend Payment Date to the Record Holder of the converted shares of Series D Preferred Stock on such Regular Record Date;

(ii) shares of Series D Preferred Stock surrendered for conversion during such period must be accompanied by cash in an amount equal to the amount of such dividend for the then-current Dividend Period with respect to the shares so converted; and

(iii) the consideration that the Corporation delivers to the converting Holder on the Optional Conversion Date shall not include any consideration for such dividend.

(h) Notwithstanding the foregoing, if on any Optional Conversion Date, the Authorized Share Condition has not been satisfied and the Corporation does not have sufficient Designated Shares to convert all shares of Series D Preferred Stock tendered for conversion on such date, then for each converting Holder, only a Prorated Portion of the number of shares of Series D Preferred Stock tendered for conversion by such Holder (rounded down to the nearest whole share of Series D Preferred Stock) shall convert on such date at the Minimum Conversion Rate. Any shares of Series D Preferred Stock not converted on such date shall remain outstanding and be deemed to have not been converted. From and after such date, until the Corporation notifies the Holders of any increase of the Designated Shares, Holders may not submit any shares of Series D Preferred Stock for optional conversion as described above. The Corporation shall issue a press release and send written notice, by first-class mail, postage prepaid, to the Record Holders as they appear on the stock register of the Corporation promptly after such Optional Conversion Date that it does not have sufficient Designated Shares to convert all shares of Series D Preferred Stock tendered for conversion on such date and that Holders will not have the right to convert Series D Preferred Stock early at their option until the Corporation notifies the Holders of any increase of the Designated Shares.

SECTION 8. Fundamental Change Conversion. (a) If a Fundamental Change occurs prior to the Mandatory Conversion Date, the Holders of the Series D Preferred Stock shall have the right to convert their shares of Series D Preferred Stock during the period (the “**Fundamental Change Conversion Period**”) beginning on, and including, the Effective Date of such Fundamental Change and ending on, but excluding, the earlier of (i) the Mandatory Conversion Date and (ii) the date that is 20 days after the Effective Date (any conversion pursuant to this Section 8 (excluding, for the avoidance of doubt, any conversion of Fundamental Change Preferred Stock issued after the Effective Date as set forth in this Section 8), a “**Fundamental Change Conversion**”) into:

(i) a number of shares of Common Stock or units of Exchange Property in accordance with Section 12(e) (if the Fundamental Change also constitutes a Reorganization Event) based on the Fundamental Change Conversion Rate; and

(ii) subject to Section 8(g) below, at the Corporation’s election and subject to the Share Cap, shares of Common Stock, units of Exchange Property, cash or a combination thereof in an amount equal to any accrued and unpaid dividends, whether or not declared, on such shares of Series D Preferred Stock (in the manner provided in Section 5), to the extent that the Corporation has lawfully available funds to pay such dividends; *provided, however*, that if the Conversion Date for such conversion occurs during the period from the close of business on a Regular Record Date for any declared dividend to the open of business on the immediately following Dividend Payment Date, then the Corporation shall pay such dividend on the Dividend Payment Date to the Record Holder of the converted shares of Series D Preferred Stock on such Regular

Record Date and the consideration that the Corporation delivers to the converting Holder will not include any consideration for such dividend.

(b) To the extent practicable, at least 20 Business Days prior to the anticipated Effective Date of the Fundamental Change, but in any event not later than two Business Days following the Corporation becoming aware of the occurrence of a Fundamental Change, a written notice (the “**Fundamental Change Company Notice**”) shall be sent by or on behalf of the Corporation, by first-class mail, postage prepaid, to the Record Holders as they appear on the stock register of the Corporation. Such notice shall contain:

(i) the date on which the Fundamental Change is anticipated to be effected;

(ii) the Fundamental Change Conversion Period;

(iii) the instructions a Holder must follow to effect a Fundamental Change Conversion in connection with such Fundamental Change; and

(iv) whether the Corporation has elected to pay all or any portion of accrued and unpaid dividends in shares of Common Stock or units of Exchange Property, as the case may be, and, if so, the portion thereof (as a percentage) that will be paid in shares of Common Stock or units of Exchange Property.

(c) To convert shares of Series D Preferred Stock pursuant to this Section 8, a Holder shall deliver to the Transfer Agent at its Corporate Trust Office, no earlier than the Effective Date of the Fundamental Change, and no later than the close of business on the last day of the Fundamental Change Conversion Period, the certificate(s) (if such shares are held in certificated form) evidencing the shares of Series D Preferred Stock that such Holder is requesting to convert, duly assigned or endorsed for transfer to the Corporation, or accompanied by duly executed stock powers relating thereto, or in blank, with a written notice to the Corporation stating the Holder’s intention to convert early in connection with the Fundamental Change containing any information required to be provided pursuant to Section 8(b)(iii) and providing the Corporation with payment instructions. Subject to Section 8(g) below, a Fundamental Change Conversion shall be deemed effective immediately prior to the close of business on the day (the “**Fundamental Change Conversion Date**”) of compliance with the procedures set forth in this Section 8(c).

(d) To the extent a Holder does not convert its shares of Series D Preferred Stock pursuant to this Section 8 and a Reorganization Event has occurred, in lieu of shares of Common Stock, the Corporation shall pay or deliver, as the case may be, to such Holder on the Mandatory Conversion Date, units of Exchange Property as determined in accordance with Section 12(e).

(e) Upon a Fundamental Change Conversion, the Transfer Agent shall, in accordance with the instructions provided by the Holder thereof in the written notice provided to the Corporation as set forth above, deliver to the Holder such cash and securities issuable upon such Fundamental Change Conversion, together with payment of cash in lieu of any fraction of a

share, as provided in Section 11. Such delivery shall take place upon, and only to the extent of, the consummation of such Fundamental Change Conversion.

(f) In the event that a Fundamental Change Conversion is effected with respect to shares of Series D Preferred Stock representing fewer than all the shares of Series D Preferred Stock held by a Holder at such Holder's election, upon such Fundamental Change Conversion, the Corporation shall execute and the Transfer Agent shall countersign and deliver to the Holder thereof, at the expense of the Corporation, a certificate evidencing the shares of Series D Preferred Stock as to which Fundamental Change Conversion was not effected.

(g) If the Authorized Share Condition has not been satisfied prior to the Fundamental Change Conversion Period, Holders of Series D Preferred Stock who exercise their right to convert shares of Series D Preferred Stock shall be deemed to have exercised such right on the last day of the Fundamental Change Conversion Period. If the Corporation does not have sufficient Designated Shares on such last day to convert all shares of Series D Preferred Stock tendered for conversion during the Fundamental Change Conversion Period, then, for each converting Holder, only a Prorated Portion of its shares of Series D Preferred Stock (rounded down to the nearest whole share of Series D Preferred Stock) tendered for conversion shall be converted on such last day at the Fundamental Change Conversion Rate. Holders of Series D Preferred Stock who exercise their right to convert shares of Series D Preferred Stock shall receive, in exchange for such shares of Series D Preferred Stock that were tendered and not converted, shares of a new series of Preferred Stock in proportion to the liquidation preference of Series D Preferred Stock so tendered (the "**Fundamental Change Preferred Stock**") with identical terms to those of the Series D Preferred Stock, including the right to receive all accrued and unpaid dividends on the Series D Preferred Stock, whether or not declared prior to the relevant Conversion Date, for the then-current Dividend Period (or portion thereof) ending on such Conversion Date and all prior Dividend Periods (other than previously declared dividends on the Series D Preferred Stock that were paid to the Record Holders as of a prior date), except that:

(i) the Conversion Rate for the Fundamental Change Preferred Stock shall be set at the Fundamental Change Conversion Rate; and

(ii) Holders of the Fundamental Change Preferred Stock shall be entitled:

(A) to receive quarterly dividend payments, when, as, and if declared by the Board of Directors, at a rate of 9% per annum;

(B) to receive and to participate in all dividends or distributions paid or made in respect of the Common Stock, on a proportional basis, based upon the number of shares of Common Stock into which the number of shares of the Fundamental Change Preferred Stock are convertible at the Fundamental Change Conversion Rate; and

(C) to a number of votes equal to the Fundamental Change Conversion Rate as of the record date for the vote or consent on all matters submitted to a vote of holders of Common Stock and shall vote together with holders of Common Stock as one class on such matters (except for the approval required to satisfy the Authorized Share Condition).

The Fundamental Change Preferred Stock shall provide that, upon any increase of the Designated Shares announced by the Corporation following the Fundamental Change Conversion Period, for each Holder of Fundamental Change Preferred Stock, a Prorated Portion of the outstanding shares of Fundamental Change Preferred Stock held by such Holder (rounded down to the nearest whole share of Series D Preferred Stock) shall automatically convert into shares of Common Stock or units of Exchange Property at the Fundamental Change Conversion Rate. The remaining Fundamental Change Preferred Stock will continue to convert on a *pro rata* basis until all outstanding shares of Fundamental Change Preferred Stock are converted.

(h) Until the Authorized Share Condition is satisfied, the Corporation shall reserve a sufficient number of authorized shares of Preferred Stock to permit all Holders of the Series D Preferred Stock to receive shares of Fundamental Change Preferred Stock upon a Fundamental Change as set forth in Section 8(g).

SECTION 9. *Conversion Procedures.* (a) On the Mandatory Conversion Date, the Fundamental Change Conversion Date or any Optional Conversion Date or Automatic Conversion Date (each, a “**Conversion Date**”), dividends on any shares of Series D Preferred Stock converted to Common Stock shall cease to accrue and cumulate, and such shares of Series D Preferred Stock shall cease to be outstanding, in each case, subject to the right of Holders of such shares to receive shares of Common Stock into which such shares of Series D Preferred Stock are convertible and any accrued and unpaid dividends on such shares to which such Holders are otherwise entitled pursuant to Section 6, Section 7 or Section 8, as applicable.

(b) The Person or Persons entitled to receive the Common Stock issuable upon any such conversion shall be treated for all purposes as the record holder(s) of such shares of Common Stock as of the close of business on the applicable Conversion Date. No allowance or adjustment, except as set forth in Section 3 and Section 12, shall be made in respect of dividends payable to holders of Common Stock of record as of any date prior to such applicable Conversion Date. Except as set forth in Section 3, prior to such applicable Conversion Date, shares of Common Stock issuable upon conversion of any shares of Series D Preferred Stock shall not be deemed outstanding for any purpose, and Holders of shares of Series D Preferred Stock shall have no rights with respect to the Common Stock (including without limitation voting rights, rights to respond to tender offers for the Common Stock and rights to receive any dividends or other distributions on the Common Stock) by virtue of holding shares of Series D Preferred Stock.

(c) Shares of Series D Preferred Stock duly converted in accordance herewith, or otherwise reacquired by the Corporation, shall resume the status of authorized and unissued Preferred Stock, undesignated as to series and available for future issuance (*provided* that any

such cancelled shares of Series D Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Series D Preferred Stock).

(d) In the event that a Holder of shares of Series D Preferred Stock shall not by written notice designate the name in which shares of Common Stock to be issued upon conversion of such Series D Preferred Stock should be registered, the Corporation shall be entitled to register such shares, and make such payment, in the name of the Holder of such Series D Preferred Stock as shown on the records of the Corporation. In the case of a Mandatory Conversion, in the event that shares of the Series D Preferred Stock are then held in certificated form, in the event that a Holder of Series D Preferred Stock shall not by written notice to the Corporation elect to receive shares of Common Stock deliverable upon such Mandatory Conversion in certificated form, the name in which such shares should be registered and the address to which the certificate or certificates representing such shares of Common Stock should be sent, the Corporation shall be entitled to register such shares, and make such payment, in book-entry form, in the name of the Holder of such Series D Preferred Stock as shown on the records of the Corporation.

SECTION 10. *Reservation of Common Stock.* (a) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock or shares held in the treasury of the Corporation, solely for issuance upon the conversion of shares of Series D Preferred Stock as herein provided, free from any preemptive or other similar rights, a number of shares of Common Stock initially equal to the Designated Shares (or such number increased from time to time), and following satisfaction of the Authorized Share Condition, equal to the Share Cap times the number of shares of Series D Preferred Stock then outstanding.

(b) Notwithstanding the foregoing, the Corporation shall be entitled to deliver upon conversion of shares of Series D Preferred Stock, as herein provided, shares of Common Stock reacquired and held in the treasury of the Corporation (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such treasury shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(c) All shares of Common Stock delivered upon conversion of the Series D Preferred Stock shall be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(d) Prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Series D Preferred Stock, the Corporation shall use its reasonable best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(e) The Corporation hereby covenants and agrees that, if at any time the Common Stock shall be listed on the New York Stock Exchange or any other national securities exchange or automated quotation system, the Corporation shall, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange

or automated quotation system, all Common Stock issuable upon conversion of the Series D Preferred Stock; *provided, however*, that if the rules of such exchange or automated quotation system permit the Corporation to defer the listing of such Common Stock until the first conversion of Series D Preferred Stock into Common Stock in accordance with the provisions hereof, the Corporation covenants to list such Common Stock issuable upon conversion of the Series D Preferred Stock in accordance with the requirements of such exchange or automated quotation system at such time.

SECTION 11. *Fractional Shares*. (a) No fractional shares of Common Stock or any other common stock included in the Exchange Property shall be issued as a result of any conversion of shares of Series D Preferred Stock or as a result of any payment of dividends on the Series D Preferred Stock in shares of Common Stock or units of Exchange Property.

(b) In lieu of any fractional share of Common Stock or any other common stock included in the Exchange Property otherwise issuable in respect of any Mandatory Conversion, Optional Conversion or Fundamental Change Conversion or as a result of the election of the Corporation to pay a dividend in shares of Common Stock or units of Exchange Property in accordance with Section 5, the Corporation shall pay an amount in cash (computed to the nearest cent) equal to the same fraction of the VWAP per share of the Common Stock or such other common stock on the Trading Day immediately preceding (x) the Conversion Date or (y) the date on which such dividend is distributed, as applicable.

(c) If more than one share of the Series D Preferred Stock is surrendered for conversion at one time by or for the same Holder, the number of full shares of Common Stock or other common stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series D Preferred Stock so surrendered. If the Corporation pays dividends in Common Stock or other common stock on more than one share of the Series D Preferred Stock held at any one time by or for the same Holder, the number of full shares of Common Stock or other common stock payable in connection with such dividend shall be computed on the basis of the aggregate number of shares of the Series D Preferred Stock so held.

SECTION 12. *Conversion Rate Adjustments to the Fixed Conversion Rates*. (a) Each Fixed Conversion Rate shall be adjusted from time to time as follows, except that so long as the Series D Preferred Stock participates in all dividends and distributions on the Common Stock as provided in Section 3(d)(ii), there will not be any adjustments to the Final Conversion Rate for such dividends and distributions occurring at any time after the Mandatory Conversion Date, even if the Mandatory Conversion does not occur on that date as a result of the failure to satisfy the Authorized Share Condition:

(i) If the Corporation issues Common Stock as a dividend or distribution to all or substantially all holders of the Common Stock, or if the Corporation effects a subdivision or combination (including, without limitation, a reverse stock split) of the Common Stock, each Fixed Conversion Rate will be adjusted based on the following formula:

$$CR^1 = CR_0 \times (OS^1 / OS_0)$$

where,

CR_0 = the Fixed Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution or immediately prior to the open of business on the effective date for such subdivision or combination, as the case may be;

CR^1 = the Fixed Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such effective date, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such effective date, as the case may be (and prior to giving effect to such event); and

OS^1 = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such dividend, distribution, subdivision or combination.

Any adjustment made under this clause (i) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such subdivision or combination, as the case may be. If any dividend, distribution, subdivision or combination of the type described in this clause (i) is declared but not so paid or made, each Fixed Conversion Rate shall be immediately readjusted, effective as of the earlier of (a) the date the Board of Directors determines not to pay or make such dividend, distribution, subdivision or combination and (b) the date the dividend or distribution was to be paid or the date the subdivision or combination was to have been effective, to the Fixed Conversion Rate that would then be in effect if such dividend, distribution, subdivision or combination had not been declared.

(ii) If the Corporation issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than pursuant to any shareholder rights plan) entitling them for a period expiring 60 days or less from the date of issuance of such rights, options or warrants to subscribe for or purchase shares of Common Stock at less than the Current Market Price per share of the Common Stock as of the announcement date for such issuance, each Fixed Conversion Rate will be increased based on the following formula:

$$CR^1 = CR_0 \times (OS_0 + X) / (OS_0 + Y)$$

where,

- CR₀ = the Fixed Conversion Rate in effect immediately prior to the close of business on the Record Date for such issuance;
- CR¹ = the Fixed Conversion Rate in effect immediately after the close of business on such Record Date;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the close of business on such Record Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the aggregate price payable to exercise such rights, options or warrants, *divided by* the Average VWAP per share of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance.

Any increase in the Fixed Conversion Rates made pursuant to this clause (ii) shall become effective immediately after the close of business on the Record Date for such issuance. To the extent such rights, options or warrants are not exercised prior to their expiration or termination, each Fixed Conversion Rate shall be decreased, effective as of the date of such expiration or termination, to the Fixed Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, each Fixed Conversion Rate shall be decreased, effective as of the earlier of (a) the date the Board of Directors determines not to issue such rights, options or warrants and (b) the date such rights, options or warrants were to have been issued, to the Fixed Conversion Rate that would then be in effect if such Record Date for such issuance had not occurred.

For purposes of this clause (ii), in determining whether any rights, options or warrants entitle the holders thereof to subscribe for or purchase shares of the Common Stock at less than the Current Market Price per share of Common Stock as of the announcement date for such issuance, and in determining the aggregate price payable to exercise such rights, options or warrants, there shall 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 other than cash, to be determined in good faith by the Board of Directors.

(iii) If the Corporation pays a dividend or other distribution to all or substantially all holders of Common Stock of shares of the Corporation's capital stock (other than Common Stock), evidences of the Corporation's indebtedness, the Corporation's assets or rights to acquire the capital stock, indebtedness or assets of the Corporation, excluding:

- (1) any dividend, distribution or issuance as to which an adjustment was effected pursuant to clause (i) or (ii) above;
- (2) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to clause (iv) below; and
- (3) Spin-Offs as to which the provisions set forth below in this clause (iii) apply,

then each Fixed Conversion Rate shall be increased based on the following formula:

$$CR^1 = CR_0 \times SP_0 / (SP_0 - FMV)$$

where,

- CR_0 = the Fixed Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;
- CR^1 = the Fixed Conversion Rate in effect immediately after the close of business on such Record Date;
- SP_0 = the Current Market Price per share of the Common Stock as of such Record Date; and
- FMV = the fair market value (as determined in good faith by the Board of Directors) on the Record Date for such dividend or distribution of shares of the Corporation's capital stock (other than Common Stock), evidences of the Corporation's indebtedness, the Corporation's assets or rights to acquire the capital stock, indebtedness or assets of the Corporation, expressed as an amount per share of Common Stock.

If the Board of Directors determines the "FMV" (as defined above) of any dividend or other distribution for purposes of this clause (iii) by referring to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period in computing the Current Market Price per share of the Common Stock as of the Record Date for such dividend or other distribution. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP₀" (as defined above), in lieu of the foregoing increase, each Holder of Series D Preferred Stock shall receive, in respect of each share thereof, at the same time and upon the same terms as holders of Common Stock receive the shares of the Corporation's capital stock (other than Common Stock), evidences of the Corporation's indebtedness, the Corporation's assets or rights to acquire the capital stock, indebtedness or assets of the Corporation that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Maximum Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or other distribution.

Any increase made under the portion of this clause (iii) shall become effective immediately after the close of business on the Record Date for such dividend or other distribution. If such dividend or distribution is not so paid or made, each Fixed Conversion Rate shall be decreased, effective as of the earlier of (a) the date the Board of Directors determines not to pay the dividend or other distribution and (b) the date such dividend or distribution was to have been paid, to the Fixed Conversion Rate that would then be in effect if the dividend or other distribution had not been declared.

Notwithstanding the foregoing, if the transaction that gives rise to an adjustment pursuant to this clause (iii) is one pursuant to which the payment of a dividend or other distribution on the Common Stock consists of shares of capital stock of, or similar equity interests in, a Subsidiary or other business unit of the Corporation (a “**Spin-Off**”) that are, or, when issued, will be, traded on a U.S. national securities exchange, then each Fixed Conversion Rate shall instead be increased based on the following formula:

$$CR^1 = CR_0 \times (FMV_0 + MP_0) / MP_0$$

where,

CR_0 = the Fixed Conversion Rate in effect at the close of business on the tenth Trading Day immediately following, and including, the date on which “ex-dividend trading” commences for such dividend or distribution on the relevant exchange;

CR^1 = the Fixed Conversion Rate in effect immediately after the close of business on the tenth Trading Day immediately following, and including, the date on which “ex-dividend trading” commences for such dividend or distribution on the relevant exchange;

FMV_0 = the Average VWAP per share of such capital stock or similar equity interests distributed to holders of the Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Day period commencing on, and including, the date on which “ex-dividend trading” commences for such dividend or distribution on the relevant exchange; and

MP_0 = the Average VWAP per share of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the date on which “ex-dividend trading” commences for such dividend or distribution on the relevant exchange.

The adjustment to each Fixed Conversion Rate under the immediately preceding paragraph shall occur at the close of business on the 10th consecutive Trading Day immediately following, and including, the date on which “ex-dividend trading” commences for such dividend or distribution on the relevant exchange, but will be given effect as of the open of business on the

date immediately succeeding the Record Date for such dividend or distribution on the relevant exchange. The Corporation shall delay the settlement of any conversion of the Series D Preferred Stock if the Conversion Date occurs after the Record Date for such dividend or distribution and prior to the end of such 10 consecutive Trading Day period. In such event, the Corporation shall deliver the shares of Common Stock issuable in respect of such conversion (based on the adjusted Fixed Conversion Rates) on the first Business Day immediately following the last Trading Day of such 10 consecutive Trading Day period.

For purposes of this subsection (iii) (and subject in all respect to subsection (ii)), rights, options or warrants distributed by the Corporation to all or substantially all holders of its Common Stock entitling them to subscribe for or purchase shares of the Corporation's capital stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this subsection (iii) (and no adjustment to the Conversion Rate under this subsection (iii) shall be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Fixed Conversion Rates shall be made under this subsection (iii). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Issue Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Fixed Conversion Rates under this subsection (iii) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Fixed Conversion Rates shall be readjusted as if such rights, options or warrants had not been issued and (y) the Fixed Conversion Rates shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Fixed Conversion Rates shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of subsection (i), subsection (ii) and this subsection (iii), if any dividend or distribution to which this subsection (iii) is applicable includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which subsection (i) is applicable (the “**Clause A Distribution**”); or

(B) an issuance of rights, options or warrants to which subsection (ii) is applicable (the “**Clause B Distribution**”),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this subsection (iii) is applicable (the “**Clause C Distribution**”) and any Fixed Conversion Rate adjustment required by this subsection (iii) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Fixed Conversion Rate adjustment required by subsection (i) and subsection (ii) with respect thereto shall then be made, except that, if determined by the Corporation (I) the “Record Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on the effective date” within the meaning of subsection (i) or “outstanding immediately prior to the close of business on such Record Date” within the meaning of subsection (ii).

(iv) If the Corporation pays a distribution consisting exclusively of cash to all or substantially all holders of the Common Stock, excluding (a) any regular quarterly cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of Common Stock does not exceed the Dividend Threshold Amount, (b) any cash that is distributed as part of a distribution referred to in clause (iii) above and as to which an adjustment thereunder was effected and (c) any consideration payable in connection with a tender or exchange offer made by the Corporation or any of the Corporation’s Subsidiaries referred to in clause (v) below and as to which an adjustment thereunder was effected, each Fixed Conversion Rate shall be increased based on the following formula:

$$CR^1 = CR_0 \times (SP_0 - T) / (SP_0 - C)$$

where,

CR_0 = the Fixed Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR^1 = the Fixed Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

SP_0 = the Current Market Price per share of the Common Stock as of the Record Date for such distribution;

T = the Dividend Threshold Amount; *provided* that if the distribution is not a regular quarterly cash dividend, the Dividend Threshold amount shall be deemed to be zero; and

C = an amount of cash per share of the Common Stock that the Corporation distributes to holders of the Common Stock.

The adjustment to each Fixed Conversion Rate made pursuant to this clause (iv) shall become effective immediately after the close of business on the Record Date for such distribution. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of Series D Preferred Stock shall receive, in respect of each share thereof, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of the Common Stock equal to the Maximum Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution. If such distribution is not so paid, each Fixed Conversion Rate shall be decreased, effective as of the earlier of (a) the date the Board of Directors determines not to pay such dividend and (b) the date such dividend was to have been paid, to the Fixed Conversion Rate that would then be in effect if such distribution had not been declared.

(v) If the Corporation or one or more of its Subsidiaries purchases Common Stock pursuant to a tender offer or exchange offer and the cash and value of any other consideration included in the payment per share of Common Stock validly tendered or exchanged exceeds the Average VWAP per share of Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “**Expiration Date**”), each Fixed Conversion Rate shall be increased based on the following formula:

$$CR^1 = CR_0 \times (FMV + (SP^1 \times OS^1)) / (SP^1 \times OS_0)$$

where:

CR₀ = the Fixed Conversion Rate in effect immediately prior to the close of business on the tenth Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

CR¹ = the Fixed Conversion Rate in effect immediately after the close of business on the tenth Trading Day immediately following, and including, the trading day next succeeding the Expiration Date;

FMV = the fair market value (as determined in good faith by the Board of Directors) as of the Expiration Date of the aggregate value of all cash and any other consideration paid or payable for shares of the Common Stock

validly tendered or exchanged and not withdrawn as of the Expiration Date (the “**Purchased Shares**”);

- OS¹ = the number of shares of Common Stock outstanding as of the last time tenders or exchanges may be made pursuant to such tender or exchange offer (the “**Expiration Time**”), less any Purchased Shares;
- OS₀ = the number of shares of Common Stock outstanding at the Expiration Time, including any Purchased Shares; and
- SP¹ = the Average VWAP per share of the Common Stock for the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The adjustment to each Fixed Conversion Rate under this clause (v) shall occur at the close of business on the 10th consecutive Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date, but will be given effect as of the open of business on the Expiration Date. The Corporation shall delay the settlement of any conversion of Series D Preferred Stock if the Conversion Date occurs during such 10 consecutive Trading Day period. In such event, the Corporation shall deliver the shares of Common Stock issuable in respect of such conversion (based on the adjusted Fixed Conversion Rates) on the first Business Day immediately following the last Trading Day of such 10 consecutive Trading Day period.

(vi) If the Corporation has in effect a shareholder rights plan while any shares of Series D Preferred Stock remain outstanding, Holders of Series D Preferred Stock shall receive, upon a conversion of Series D Preferred Stock, in addition to Common Stock, rights under the Corporation’s shareholder rights agreement unless, prior to such conversion, the rights have expired, terminated or been redeemed or unless the rights have separated from the Common Stock. If the rights provided for in the shareholder rights plan have separated from the Common Stock in accordance with the provisions of the applicable shareholder rights agreement so that Holders of Series D Preferred Stock would not be entitled to receive any rights in respect of the Common Stock, if any, that the Corporation is required to deliver upon conversion of Series D Preferred Stock, each Fixed Conversion Rate shall be adjusted at the time of separation as if the Corporation had distributed to all holders of the Common Stock, capital stock (other than Common Stock), evidences of the Corporation’s indebtedness, the Corporation’s assets or rights to acquire the capital stock, indebtedness or assets of the Corporation pursuant to clause (iii) above, subject to readjustment upon the subsequent expiration, termination or redemption of the rights. A distribution of rights pursuant to a shareholder rights plan will not trigger an adjustment to the Fixed Conversion Rates pursuant to clauses (ii) or (iii) above.

(b) *Adjustment for Tax Reasons.* The Corporation may make such increases in each Fixed Conversion Rate, in addition to any other increases required by this Section 12, if the Board of Directors deems it advisable in order to avoid or diminish any income tax to holders of

the Common Stock resulting from any dividend or distribution of the Corporation's shares (or issuance of rights or warrants to acquire shares) or from any event treated as such for income tax purposes or for any other reasons; *provided* that the same proportionate adjustment must be made to each Fixed Conversion Rate. If any adjustment to the Fixed Conversion Rate is treated as a distribution to any non-U.S. Holder which is subject to withholding tax, the Corporation (or Transfer Agent or any paying agent on behalf of the Corporation) may withhold any withholding tax that is required to be collected with respect to such deemed distribution from cash payments and other distributions otherwise deliverable to such Holder.

(c) Calculation of Adjustments; Adjustments to Threshold Appreciation Price, Initial Price, Applicable Market Value and Fundamental Change Market Value.

(i) No adjustment in any Fixed Conversion Rate will be required unless the adjustment would require an increase or decrease of at least 1% of the Fixed Conversion Rate. If the adjustment is not made because the adjustment does not change the Fixed Conversion Rate by at least 1%, then the adjustment that is not made will be carried forward and taken into account in any future adjustment. All required calculations will be made to the nearest cent or 1/10,000th of a share. Notwithstanding the foregoing, all adjustments not previously made shall be made upon any Mandatory Conversion, Optional Conversion or Fundamental Change Conversion. If an adjustment is made to the Fixed Conversion Rates pursuant to this Section 12, an inversely proportional adjustment shall also be made to the Threshold Appreciation Price and the Initial Price solely for purposes of determining which of clauses (i), (ii) and (iii) of the definition of Conversion Rate shall apply on the Mandatory Conversion Date. Such adjustment shall be made by dividing each of the Threshold Appreciation Price and the Initial Price by a fraction, the numerator of which shall be either Fixed Conversion Rate immediately after such adjustment pursuant to clause (i), (ii), (iii), (iv) or (v) of Section 12(a) or Section 12(b) and the denominator of which shall be such Fixed Conversion Rate immediately before such adjustment. The Corporation shall make appropriate adjustments to the VWAP per share of Common Stock prior to the relevant Record Date, effective date or Expiration Date used to calculate the Applicable Market Value or the Fundamental Change Market Value, as the case may be, to account for any adjustments to the Fixed Conversion Rates that became effective during the period in which the Applicable Market Value or the Fundamental Change Market Value, as the case may be, is being calculated.

(ii) No adjustment to the Fixed Conversion Rates need be made if Holders participate in the transaction that would otherwise require an adjustment (other than in the case of a share split or share combination), at the same time, upon the same terms and otherwise on the same basis as holders of the Common Stock and solely as a result of holding Series D Preferred Stock, as if such Holders held a number of shares of the Common Stock equal to the Maximum Conversion Rate as of the Record Date for such transaction, *multiplied* by the number of shares of Series D Preferred Stock held by such Holders.

(iii) Notwithstanding the foregoing, if an adjustment to the Fixed Conversion Rates becomes effective after any “ex-dividend trading” as provided in Section 12(a), and a Holder that has converted its Series D Preferred Stock on or after the effective date of such adjustment and on or prior to the related Record Date would be treated as the record holder of shares of Common Stock as of the related Conversion Date based on an adjusted Fixed Conversion Rate, then, notwithstanding the foregoing adjustments in this Section 12, the adjustment relating to such effective date shall not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(iv) The Fixed Conversion Rates shall not be adjusted upon:

(A) the issuance of any shares of Common Stock in the acquisition described under “Pending Mariner Acquisition” in the preliminary prospectus supplement dated July 20, 2010 relating to the initial offering of Series D Preferred Stock;

(B) the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Corporation’s securities and the investment of additional optional amounts in the Common Stock under any plan;

(C) the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan, employee agreement or arrangement or program of the Corporation;

(D) the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security outstanding as of the Issue Date (other than a shareholder rights plan);

(E) payment of regular quarterly dividends on the Common Stock not in excess of the Dividend Threshold Amount;

(F) a change solely in the par value of the Common Stock; or

(G) as a result of a tender offer solely to holders of fewer than 100 shares of the Common Stock.

(v) The Corporation shall have the power to resolve any ambiguity and its action in so doing, as evidenced by a resolution of the Board of Directors, shall be final and conclusive unless clearly inconsistent with the intent hereof.

(d) *Notice of Adjustment.* Whenever a Fixed Conversion Rate or the Fundamental Change Conversion Rate, as applicable, is to be adjusted, the Corporation shall: (i) compute

such adjusted Fixed Conversion Rate or the Fundamental Change Conversion Rate, as applicable, and prepare and transmit to the Transfer Agent an Officers' Certificate setting forth such adjusted Fixed Conversion Rate or the Fundamental Change Conversion Rate, as applicable, the method of calculation thereof in reasonable detail and the facts requiring such adjustment and upon which such adjustment is based; (ii) as soon as practicable following the determination of a revised Fixed Conversion Rate or Fundamental Change Conversion Rate, as applicable, provide, or cause to be provided, a written notice to the Holders of the Series D Preferred Stock of the occurrence of such event and (iii) as soon as practicable following the determination of a revised Fixed Conversion Rate or Fundamental Change Conversion Rate, as applicable, provide, or cause to be provided, to the Holders of the Series D Preferred Stock a statement setting forth in reasonable detail the method by which the adjustment to such Fixed Conversion Rate or the Fundamental Change Conversion Rate, as applicable, was determined and setting forth such revised Fixed Conversion Rate or Fundamental Change Conversion Rate, as applicable.

(e) *Recapitalizations, Reclassifications and Changes of the Common Stock.* In the event of:

(A) any recapitalization, reclassification or change of the Common Stock (other than changes only in par value or resulting from a subdivision or combination of shares);

(B) any consolidation or merger of the Corporation with or into another Person;

(C) any sale, transfer, lease or conveyance to another Person of all or substantially all of the Corporation's and its Subsidiaries' property and assets; or

(D) any statutory exchange of the Corporation's securities with another Person (other than in connection with a merger or acquisition), any reclassification or any binding share exchange which reclassifies or changes the outstanding Common Stock;

in each case as a result of which the shares of Common Stock are exchanged for, or converted into, other securities, property or assets (including cash or any combination thereof) (any such event, a "**Reorganization Event**"), then, at and after the effective time of such Reorganization Event, each share of Series D Preferred Stock outstanding immediately prior to such Reorganization Event shall, without the consent of the Holders of the Series D Preferred Stock, become convertible into the kind and amount of such other securities, property or assets (including cash or any combination thereof) that holders of the Common Stock received in such Reorganization Event (the "**Exchange Property**"), and, prior to or at the effective time of such Reorganization Event, the Corporation shall amend its Charter to provide for such change in the convertibility of the Series D Preferred Stock; *provided that* if the kind and amount of Exchange Property receivable upon such Reorganization Event is not the same for each share of Common Stock held immediately prior to such Reorganization Event by a Person, then the Exchange Property receivable upon such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of the Common Stock that

affirmatively make an election (or of all such holders if none makes an election). If a Conversion Date follows a Reorganization Event, the Conversion Rate then in effect shall be applied on the Conversion Date to the amount of such Exchange Property received per share of the Common Stock in the Reorganization Event (a “**unit of Exchange Property**”), as determined in accordance with this Section 12(e). For the purpose of determining which clause of the definition of Conversion Rate shall apply on any such Conversion Date and for the purpose of calculating the Conversion Rate if clause (ii) of the definition thereof is applicable, the value of a unit of Exchange Property shall be determined in good faith by the Board of Directors, except that if a unit of Exchange Property includes common stock that are traded on a U.S. national securities exchange, the value of such common stock shall be the Applicable Market Value determined with regard to a share of such common stock, *mutatis mutandis*. For the purpose of paying accrued and unpaid dividends in units of Exchange Property in accordance with Section 5, the value of a unit of Exchange Property shall equal 97% of the value determined pursuant to the immediately preceding sentence.

The above provisions of this Section 12(e) shall similarly apply to successive Reorganization Events and the provisions of Section 12 shall apply to any shares of capital stock of the Corporation (or any successor) received by the holders of Common Stock in any such Reorganization Event.

The Corporation (or any successor) shall, as soon as reasonably practicable (but in any event within 20 days) after the occurrence of any Reorganization Event, provide written notice to the Holders of such occurrence of such Reorganization Event and of the kind and amount of the cash, securities or other property that constitute the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 12(e).

(f) In connection with any Reorganization Event, the Dividend Threshold Amount shall be subject to adjustment as described in clause (i), clause (ii) or clause (iii) below, as the case may be.

(i) In the case of a Reorganization Event in which the Exchange Property (determined, as appropriate, pursuant to the Section 12(e) and excluding any dissenters’ appraisal rights) is composed entirely of shares of common stock (the “**Merger Common Stock**”), the Dividend Threshold Amount at and after the effective time of such Reorganization Event shall be equal to (x) the Dividend Threshold Amount immediately prior to the effective time of such Reorganization Event, *divided by* (y) the number of shares of Merger Common Stock that a holder of one share of Common Stock would receive in such Reorganization Event (such quotient rounded down to nearest cent).

(ii) In the case of a Reorganization Event in which the Exchange Property (determined, as appropriate, pursuant to Section 12(e) and excluding any dissenters’ appraisal rights) is composed in part of shares of Merger Common Stock, the Dividend Threshold Amount at and after the effective time of such Reorganization Event shall be equal to (x) the Dividend Threshold Amount immediately prior to the effective time of

such Reorganization Event, *multiplied by* (y) the Merger Valuation Percentage for such Reorganization Event (such quotient rounded down to nearest cent).

(iii) For the avoidance of doubt, in the case of a Reorganization Event in which the Exchange Property (determined, as appropriate, pursuant to Section 12(e) and excluding any dissenters' appraisal rights) is composed entirely of consideration other than shares of common stock, the Dividend Threshold Amount at and after the effective time of such Reorganization Event shall be equal to zero.

(iv) The "**Merger Valuation Percentage**" for a Reorganization Event shall be equal to (x) the Average VWAP of one share of Merger Common Stock over the five consecutive Trading Day period immediately preceding, and excluding, the effective date of the Reorganization Event, *divided by* (y) the Average VWAP of one share of Common Stock over such period.

(g) For purposes of this Section 12, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

SECTION 13. *Liquidation Rights.* (a) *Voluntary or Involuntary Liquidation.* In the event of any liquidation, dissolution or winding-up of the affairs of the Corporation, whether voluntary or involuntary, each Holder of Series D Preferred Stock shall be entitled to receive for each share of Series D Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any creditors of the Corporation, before any payment or distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other Junior Stock of the Corporation, payment in full in an amount equal to the sum of (a) \$1,000 per share of Series D Preferred Stock and (b) an amount equal to any accrued and unpaid dividends on each share of Series D Preferred Stock, whether or not declared, to the date fixed for liquidation, dissolution or winding-up (such amounts collectively, the "**Liquidation Preference**").

(b) *Partial Payment.* If in any distribution described in Section 13 the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Series D Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series D Preferred Stock as to such distribution, Holders of Series D Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full accrued and unpaid respective distributions to which they are entitled.

(c) *Residual Distributions.* If the Liquidation Preference has been paid in full to all Holders of Series D Preferred Stock, the Holders of the Series D Preferred Stock will have no right or claim to any of the remaining assets of the Corporation (or proceeds thereof).

(d) *Merger, Consolidation and Sale of Assets Not Liquidation.* For purposes of this Section 13, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the Holders of Series D Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding-up of the Corporation.

SECTION 14. *No Sinking Fund.* The Series D Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series D Preferred Stock will have no right to require redemption or repurchase of any shares of Series D Preferred Stock.

SECTION 15. *Status of Repurchased Shares.* Shares of Series D Preferred Stock that are repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series D Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Series D Preferred Stock).

SECTION 16. *Voting Rights.* (a) *General.* The Holders of Series D Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law or the Charter. Holders of shares of Series D Preferred Stock will be entitled to one vote for each such share on any matter on which Holders of Series D Preferred Stock are entitled to vote, including any action by written consent. In addition, following the Mandatory Conversion Date, the Holders of shares of Series D Preferred Stock shall have the voting rights provided under Section 3(d) if the Authorized Share Condition is not satisfied on such date.

(b) *Preferred Directors.* Whenever, at any time or times, dividends payable on the shares of Series D Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive (a “**Nonpayment**”), the authorized number of directors on the Board of Directors shall automatically be increased by two and the Holders of Series D Preferred Stock will have the right, with holders of shares of any one or more other classes or series of outstanding Parity Stock upon which like voting rights have been conferred and are exercisable at the time, voting together as a class (and with voting rights allocated *pro rata* based on the liquidation amount of each such class or series), to elect two directors (collectively, the “**Preferred Directors**” and each, a “**Preferred Director**”) to fill such newly created directorships at the Corporation’s next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting by the Chairman of the Board of Directors or Chief Executive Officer of the Corporation or holders of record of at least 10% of (i) outstanding Series D Preferred Stock or (ii) any such class or series of the Corporation’s capital stock entitled to vote for such Preferred Directors) and at each subsequent annual meeting of the Corporation’s stockholders until all accrued and unpaid dividends have been paid on Series D Preferred Stock, at which time such right will terminate, except as otherwise provided or expressly provided by law, subject to revesting in the event of each and every nonpayment; *provided* that it will be a qualification for election for any Preferred Director that the election of such Preferred Director will not cause the Corporation to violate any corporate governance

requirements of any securities exchange or other trading facility on which the Corporation's securities may then be listed or traded that listed or traded companies must have a majority of independent directors.

Upon any termination of the right set forth in the immediately preceding paragraph, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately, and the authorized number of directors shall be reduced by the number of Preferred Directors elected as described above. Any Preferred Director may be removed at any time, without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the Holders of a majority in voting power of the shares of Series D Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Parity Stock upon which like voting rights have been conferred and are exercisable at the time (and with voting rights allocated *pro rata* based on the liquidation preference of each such class or series), to the extent the voting rights of such Holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who will hold office for the unexpired term in respect of which such vacancy occurred.

(c) *Voting Rights as to Particular Matters.* So long as any shares of Series D Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the affirmative vote or consent of the Holders of at least 66 2/3% in voting power of the shares of Series D Preferred Stock at the time outstanding and all other Parity Stock having similar voting rights that are exercisable, voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) *Reclassification of Senior Stock.* Any reclassification of authorized shares of the Corporation into any shares of any class, or any obligation or security convertible into or evidencing a right to purchase such shares, ranking senior to the Series D Preferred Stock as to payment of dividends or distribution of assets upon the dissolution, liquidation or winding up of the Corporation;

(ii) *Authorization of Senior Stock.* Any issuance, authorization or increase of the authorized amount of, or issuance or authorization of any obligation or security convertible into or evidencing a right to purchase any stock of, any class or series ranking senior to the Series D Preferred Stock as to payment of dividends or distribution of assets upon dissolution, liquidation or winding-up of the Corporation; *provided* that the Corporation may issue, authorize or increase the authorized amount of, or issue or authorize any obligation or security convertible into or evidencing a right to purchase, any shares of capital stock of the Corporation ranking on a parity with or junior to the Series D Preferred Stock as to payment of dividends or distribution of assets upon dissolution, liquidation or winding-up of the Corporation;

(iii) *Amendment of Series D Preferred Stock.* Any amendment, alteration or repeal of any provision of the Certificate of Designations or the Charter (including, unless

no vote on such merger or consolidation is required by clause (iv) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Series D Preferred Stock; or

(iv) *Share Exchanges, Reclassifications, Mergers and Consolidations.* Any consummation of a binding share exchange or reclassification involving the Series D Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series D Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Series D Preferred Stock immediately prior to such consummation, taken as a whole;

provided, however, that for all purposes of this Section 16(c), the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Series D Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the Holders of outstanding shares of the Series D Preferred Stock.

(d) *Procedures for Voting and Consents.* The rules and procedures for calling and conducting any meeting of the Holders of Series D Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws and applicable law and the rules of any national securities exchange or other trading facility on which Series D Preferred Stock is listed or traded at the time.

SECTION 17. *Record Holders.* To the fullest extent permitted by applicable law, the Corporation and the Transfer Agent may deem and treat the Record Holder of any share of Series D Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor the Transfer Agent shall be affected by any notice to the contrary.

SECTION 18. *Notices.* All notices or communications in respect of Series D Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Series D Preferred Stock are issued in book-entry form through DTC or any similar facility, such notices may be given to the Holders of Series D Preferred Stock in any manner permitted by such facility.

SECTION 19. *No Preemptive Rights; No Redemption Right.* No share of Series D Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted. The Series D Preferred Stock will not be redeemable.

SECTION 20. *Replacement Stock Certificates.* (a) If physical certificates are issued, and any of the Series D Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Corporation shall, at the expense of the Holder, issue, in exchange and in substitution for and upon cancellation of the mutilated Series D Preferred Stock certificate, or in lieu of and substitution for the Series D Preferred Stock certificate lost, stolen or destroyed, a new Series D Preferred Stock certificate of like tenor and representing an equivalent amount of shares of Series D Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Series D Preferred Stock certificate and indemnity, if requested, satisfactory to the Corporation and the Transfer Agent.

(b) The Corporation is not required to issue any certificate representing the Series D Preferred Stock on or after the Mandatory Conversion Date. In lieu of the delivery of a replacement certificate following the Mandatory Conversion Date, the Transfer Agent, upon delivery of the evidence and indemnity described above, shall deliver the shares of Common Stock issuable pursuant to the terms of the Series D Preferred Stock formerly evidenced by the certificate.

SECTION 21. *Transfer Agent, Registrar, Conversion and Dividend Disbursing Agent.* The duly appointed transfer agent, registrar, conversion and dividend disbursing agent for the Series D Preferred Stock shall be the Transfer Agent. The Corporation may, in its sole discretion, remove the Transfer Agent in accordance with the agreement between the Corporation and the Transfer Agent; provided that the Corporation shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal. Upon any such removal or appointment, the Corporation shall send notice thereof by first-class mail, postage prepaid, to the Holders of the Series D Preferred Stock.

SECTION 22. *Form.* (a) The Series D Preferred Stock shall initially be issued in the form of one or more definitive shares in fully registered form in substantially the form attached hereto as Exhibit A (each, a “**Certificated Series D Preferred Stock**”), which is hereby incorporated in and expressly made a part of this Certificate of Designations. Each Certificated Series D Preferred Stock shall reflect the number of shares of Series D Preferred Stock

represented thereby, and may have notations, legends or endorsements required by law, stock exchange rules, agreements to which the Corporation is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Corporation). Each Certificated Series D Preferred Stock shall be registered in the name or names of the Person or Persons specified by the Corporation in a written instrument to the Registrar.

(b) If DTC or another depositary reasonably acceptable to the Corporation (the “**Depositary**”) is willing to act as depositary for the Global Preferred Shares, a Holder who is an Agent Member may request for the Corporation to issue one or more shares of Series D Preferred Stock in global form with the global legend (the “**Global Shares Legend**”) as set forth on the form of Series D Preferred Stock certificate attached hereto as Exhibit A (each, a “**Global Preferred Share**”), in exchange for the Certificated Series D Preferred Stock held by such Holder, with the same terms and of an equal aggregate Liquidation Preference. The Global Preferred Shares may have notations, legends or endorsements required by law, stock exchange rules, agreements to which the Corporation is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Corporation). Any Global Preferred Shares shall be deposited on behalf of the Holders of the Series D Preferred Stock represented thereby with the Registrar, at its New York office as custodian for a Depositary, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Corporation and countersigned and registered by the Registrar as hereinafter provided. The aggregate number of shares represented by each Global Preferred Share may from time to time be increased or decreased by adjustments made on the records of the Registrar and the Depositary or its nominee as hereinafter provided. This Section 22(b) shall apply only to a Global Preferred Share deposited with or on behalf of the Depositary. The Corporation shall execute and the Registrar shall, in accordance with this Section 22(b), countersign and deliver any Global Preferred Shares that (i) shall be registered in the name of Cede & Co. or other nominee of the Depositary and (ii) shall be delivered by the Registrar to Cede & Co. or pursuant to instructions received from Cede & Co. or held by the Registrar as custodian for the Depositary pursuant to an agreement between the Depositary and the Registrar. Members of, or participants in, the Depositary (“**Agent Members**”) shall have no rights under this Certificate of Designations, with respect to any Global Preferred Share held on their behalf by the Depositary or by the Registrar as the custodian of the Depositary, or under such Global Preferred Share, and the Depositary may be treated by the Corporation, the Registrar and any agent of the Corporation or the Registrar as the absolute owner of such Global Preferred Share for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Corporation, the Registrar or any agent of the Corporation or the Registrar from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices of the Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Share. The Holder of the Global Preferred Shares may grant proxies or otherwise authorize any Person to take any action that a Holder is entitled to take pursuant to the Global Preferred Shares, this Certificate of Designations or the Charter. Owners of beneficial interests in Global Preferred Shares shall not be entitled to receive physical delivery of certificated shares of Series D Preferred Stock, unless (x) the Depositary notifies the Corporation that it is unwilling or unable

to continue as Depositary for the Global Preferred Shares and the Corporation does not appoint a qualified replacement for the Depositary within 90 days or (y) the Depositary ceases to be a “clearing agency” registered under the Exchange Act and the Corporation does not appoint a qualified replacement for the Depositary within 90 days. In any such case, the Global Preferred Shares shall be exchanged in whole for Certificated Series D Preferred Stock, with the same terms and of an equal aggregate Liquidation Preference, and such Certificated Series D Preferred Stock shall be registered in the name or names of the Person or Persons specified by the Depositary in a written instrument to the Registrar.

(c) *Signature.* Two Officers permitted by applicable law shall sign each certificate representing the Series D Preferred Stock for the Corporation, in accordance with the Corporation’s Bylaws and applicable law, by manual or facsimile signature. If an Officer whose signature is on a certificate representing the Series D Preferred Stock no longer holds that office at the time the Transfer Agent countersigned such certificate, such certificate shall be valid nevertheless. A certificate representing the Series D Preferred Stock shall not be valid until an authorized signatory of the Transfer Agent manually countersigns such certificate. Each certificate representing the Series D Preferred Stock shall be dated the date of its countersignature.

SECTION 23. *Stock Transfer and Stamp Taxes.* The Corporation shall pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of shares of Series D Preferred Stock or shares of Common Stock or other securities issued on account of Series D Preferred Stock pursuant hereto or certificates representing such shares or securities. The Corporation shall not, however, 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 Series D Preferred Stock or Common Stock or other securities in a name other than that in which the shares of Series D Preferred Stock with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any Person other than a payment to the Holder thereof, 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.

SECTION 24. *Other Rights.* The shares of Series D Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

This Certificate shall be effective as of July 28, 2010.

IN WITNESS WHEREOF, Apache Corporation has caused this Certificate of Designations to be signed by Roger B. Plank, its President, and attested by Cheri L. Peper, its Corporate Secretary, this 28th day of July 2010.

APACHE CORPORATION

By: _____
Name: Roger B.Plank
Title: President

ATTEST:

By: _____
Name: Cheri L. Peper
Title: Corporate Secretary

CERTIFICATE OF DESIGNATIONS SIGNATURE PAGE

[FORM OF FACE OF SERIES D PREFERRED STOCK]

[INCLUDE FOR GLOBAL PREFERRED SHARES]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), TO THE CORPORATION OR THE TRANSFER AGENT NAMED ON THE FACE OF THIS CERTIFICATE, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE STATEMENT WITH RESPECT TO SHARES. IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT NAMED ON THE FACE OF THIS CERTIFICATE SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

Certificate Number [____]

[Initial] Number of Shares of Series D
Preferred Stock [_____]

CUSIP 037411 881
ISIN US0374118810

APACHE CORPORATION

Series D Preferred Stock
(with no par value)
(liquidation amount as specified below)

APACHE CORPORATION, a Delaware corporation (the “**Corporation**”), hereby certifies that [_____] (the “**Holder**”), is the registered owner of [[_____] ([_____])][the number shown on Schedule I hereto of] fully paid and non-assessable shares of the Corporation’s designated Series D Preferred Stock, with no par value and a liquidation amount of \$1,000 per share (the “**Series D Preferred Stock**”). The shares of Series D Preferred Stock are transferable on the books and records of the Registrar, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Series D Preferred Stock represented hereby are and shall in all respects be subject to the provisions of the Certificate of Designations, Preferences and Rights dated July 28, 2010 as the same may be amended from time to time (the “**Certificate of Designations**”). Capitalized terms used herein but not defined shall have the meaning given them in the Certificate of Designations. The Corporation will provide a copy of the Certificate of Designations to a Holder without charge upon written request to the Corporation at its principal place of business.

Reference is hereby made to select provisions of the Series D Preferred Stock set forth on the reverse hereof, and to the Certificate of Designations, which select provisions and the Certificate of Designations shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this executed certificate, the Holder is bound by the Certificate of Designations and is entitled to the benefits thereunder.

Unless the Registrar has properly countersigned, these shares of Series D Preferred Stock shall not be entitled to any benefit under the Certificate of Designations or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, this certificate has been executed on behalf of the Corporation by two Officers of the Corporation this [] of [] [].

APACHE CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

REGISTRAR'S COUNTERSIGNATURE

These are shares of Series D Preferred Stock referred to in the within-mentioned Certificate of Designations.

Dated: [____], [____]

WELLS FARGO BANK, N.A., as
Registrar

By: _____

Name:

Title:

[FORM OF REVERSE OF CERTIFICATE FOR SERIES D PREFERRED STOCK]

Cumulative dividends on each share of Series D Preferred Stock shall be payable at the applicable rate provided in the Certificate of Designations.

The shares of Series D Preferred Stock shall be convertible in the manner and accordance with the terms set forth in the Certificate of Designations.

The Corporation shall furnish without charge to each holder who so requests a summary of the authority of the Board of Directors to determine variations for future series within a class of stock and the designations, limitations, preferences and relative, participating, optional or other special rights of each class or series of share capital issued by the Corporation and the qualifications, limitations or restrictions of such preferences and/or rights.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Series D Preferred Stock evidenced hereby to:

(Insert assignee's social security or taxpayer identification number, if any)

(Insert address and zip code of assignee)

and irrevocably appoints:

as agent to transfer the shares of Series D Preferred Stock evidenced hereby on the books of the Transfer Agent. The agent may substitute another to act for him or her.

Date:

Signature:

(Sign exactly as your name appears on the other side of this Certificate)

Signature Guarantee:

(Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

Apache Corporation
Global Preferred Share
6.00% Mandatory Convertible Preferred Stock, Series D

Certificate Number:

The number of shares of Series D Preferred Stock initially represented by this Global Preferred Share shall be _____. Thereafter the Transfer Agent and Registrar shall note changes in the number of shares of Series D Preferred Stock evidenced by this Global Preferred Share in the table set forth below:

Amount of Decrease in Number of Shares Represented by this Global Preferred Share	Amount of Increase in Number of Shares Represented by this Global Preferred Share	Number of Shares Represented by this Global Preferred Share following Decrease or Increase	Signature of Authorized Officer of Transfer Agent and Registrar
_____	_____	_____	_____

¹ Attach Schedule I only to Global Preferred Shares.

DEPOSIT AGREEMENT

Dated

July 28, 2010

APACHE CORPORATION

AS ISSUER

and

WELLS FARGO BANK, N.A.

AS DEPOSITARY, REGISTRAR AND TRANSFER AGENT

**RELATING TO RECEIPTS, DEPOSITARY SHARES AND RELATED
6.00% MANDATORY CONVERTIBLE PREFERRED STOCK, SERIES D**

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DEPOSIT AGREEMENT

DEPOSIT AGREEMENT, dated July 28, 2010, among **APACHE CORPORATION**, a Delaware corporation, **WELLS FARGO BANK, N.A.**, a national banking association, as Depositary, and all holders from time to time of Receipts (as hereinafter defined) issued hereunder.

WITNESSETH:

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares from time to time of the Convertible Preferred Stock (as hereinafter defined) with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Depositary Shares representing a fractional interest in the Convertible Preferred Stock deposited and for the execution and delivery of Receipts evidencing Depositary Shares;

WHEREAS, the Receipts are to be substantially in the form of **Exhibit A** annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

WHEREAS, the terms, conditions, and pricing mechanisms upon conversion of the Convertible Preferred Stock are set forth in the Certificate of Designations attached hereto as **Exhibit B**; and

NOW, THEREFORE, in consideration of the premises contained herein, it is agreed by and among the parties hereto as follows:

ARTICLE 1 DEFINITIONS

The following definitions shall apply to the respective terms (in the singular and plural forms of such terms) used in this Deposit Agreement and the Receipts:

“Authorized Share Condition” shall have the meaning set forth in the Certificate of Designations and is satisfied as of the date hereof.

“Board of Directors” shall have the meaning set forth in the Certificate of Designations.

“Certificate of Designations” shall mean the Certificate of Designations, Preferences and Rights of 6.00% Mandatory Convertible Preferred Stock, Series D that amends the Certificate of Incorporation, adopted by the Board of Directors, establishing and setting forth the rights, preferences and privileges of the Convertible Preferred Stock, as filed with the Secretary of State of the State of Delaware on July 28, 2010 and attached hereto as Exhibit B, and as such certificate may be amended or restated from time to time.

“Certificate of Incorporation” shall mean the Company’s Restated Certificate of Incorporation, including any certificates of designation, as it may be amended from time to time.

“close of business” shall mean 5:00 p.m. (New York City time).

“Common Stock” shall mean the common stock, par value \$0.625, of the Company.

“Company” shall mean Apache Corporation, a Delaware corporation, and its successors.

“Conversion Date” shall have the meaning set forth in the Certificate of Designations.

“Conversion Number” shall have the meaning set forth in Section 2.10.

“Convertible Preferred Stock” shall mean the Company’s 6.00% Mandatory Convertible Preferred Stock, Series D, with no par value, heretofore validly issued, fully paid and nonassessable.

“Definitive Receipts” has the meaning set forth in SECTION 2.01.

“Deposit Agreement” shall mean this agreement, as the same may be amended, modified or supplemented from time to time.

“Depositary” shall mean Wells Fargo Bank, N.A., or any successor appointed as depositary pursuant to Section 5.04.

“Depositary Office” shall mean the designated office of the Depositary at which at any particular time its business in respect of matters governed by this Deposit Agreement shall be administered, which at the date of this Deposit Agreement is located at 161 North Concord Exchange, South St. Paul MN 55075.

“Depositary Share” shall mean the security representing a 1/20th fractional interest in a share of Convertible Preferred Stock deposited with the Depositary hereunder, as evidenced by the Receipts issued hereunder.

“Depositary’s Agent” shall mean an agent appointed by the Depositary as provided, and for the purposes specified, in Section 7.05.

“Designated Shares” shall have the meaning set forth in the Certificate of Designations.

“Dividend Payment Date” shall have the meaning set forth in the Certificate of Designations.

“Dividend Period” shall have the meaning set forth in the Certificate of Designations.

“DTC” means The Depository Trust Company.

“Exchange Property” shall have the meaning set forth in the Certificate of Designations.

“Fundamental Change Conversion” shall have the meaning set forth in the Certificate of Designations.

“Fundamental Change Preferred Stock” shall have the meaning set forth in the Certificate of Designations.

“Global Receipt” has the meaning set forth in Section 2.01.

“Mandatory Conversion” shall have the meaning set forth in the Certificate of Designations.

“Mandatory Conversion Date” shall have the meaning set forth in the Certificate of Designations.

“open of business” shall mean 9:00 a.m. (New York City time).

“Optional Conversion” shall have the meaning set forth in the Certificate of Designations.

“Person” shall mean any natural person, partnership, joint venture, firm, corporation, limited liability company, limited liability partnership, unincorporated association, trust or other entity, and shall include any successor (by merger or otherwise) of the foregoing.

“Receipt” shall mean a receipt issued hereunder to evidence one or more Depositary Shares, whether in definitive or temporary form, substantially in the form set forth as **Exhibit A** hereto.

“record date” as applied to a Receipt shall mean the date fixed pursuant to Section 4.04.

“Record holder” or **“holder”** as applied to a Receipt shall mean the Person in whose name such Receipt is registered on the books maintained by the Depositary for such purpose.

“Registrar” shall mean Wells Fargo Bank, N.A., or any bank or trust company appointed as successor thereto pursuant to Section 5.04 to register ownership and transfers of Receipts and the deposited Convertible Preferred Stock.

“Regular Record Date” shall have the meaning set forth in the Certificate of Designations.

“Reorganization Event” shall have the meaning set forth in the Certificate of Designations.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Transfer Agent” shall mean Wells Fargo Bank, N.A., or any bank or trust company appointed as successor thereto pursuant to Sections 2.02 and 5.04 to transfer the Receipts and the deposited Convertible Preferred Stock.

“unit of Exchange Property” shall have the meaning set forth in the Certificate of Designations.

ARTICLE 2
FORM OF RECEIPTS, DEPOSIT OF CONVERTIBLE PREFERRED
STOCK, EXECUTION AND DELIVERY, TRANSFER, SURRENDER
OF RECEIPTS

SECTION 2.01 *Rights, Privileges and Preferences; Form and Transferability of Receipts.*

Subject to the terms of this Deposit Agreement, each holder of a Receipt is entitled, proportionately, to all the rights, preferences and privileges of the Convertible Preferred Stock represented by the Depositary Shares evidenced by such Receipt (including the conversion, dividend, voting, and liquidation rights contained in the Certificate of Designations) and the same proportionate interest in any and all other property received by the Depositary in respect of such Convertible Preferred Stock and held under this Deposit Agreement.

Except as provided herein, if requested by any holder, definitive Receipts (the “**Definitive Receipts**”) shall be printed and shall be substantially in the form set forth in Exhibit A annexed to this Deposit Agreement, in each case with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of Definitive Receipts, the Depositary, upon, and pursuant to, the written order of the Company delivered in compliance with Section 2.02 shall be authorized and instructed to, and shall, execute and deliver temporary Receipts which shall be substantially of the tenor of the Definitive Receipts in lieu of which they are issued and in each case with such appropriate insertions, omissions, substitutions and other variations as the Persons executing such Receipts may determine (but which do not affect the rights or duties of the Depositary), as evidenced by their execution of such Receipts. If temporary Receipts are issued, the Company and the Depositary will cause Definitive Receipts to be prepared without unreasonable delay. After the preparation of Definitive Receipts, the temporary Receipts shall be exchangeable for Definitive Receipts upon surrender of the temporary Receipts at the Depositary Office without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary is hereby authorized and instructed to, and shall, execute and deliver in exchange therefor Definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts. Such exchange shall be made at the Company’s expense and without any charge therefor. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Convertible Preferred Stock deposited, as Definitive Receipts.

Receipts shall be executed by the Depositary by the manual or facsimile signature of a duly authorized signatory of the Depositary; provided, that if a Registrar for the Receipts (other than the Depositary) shall have been appointed then such Receipts shall also be countersigned by manual or facsimile signature of a duly authorized signatory of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed as provided in the preceding sentence. The Depositary shall record on its books each Receipt executed as provided above and delivered as hereinafter provided. Receipts bearing the manual or facsimile signature of a duly authorized signatory of the Depositary who was at any time a proper signatory of the Depositary shall bind the Depositary, notwithstanding that such signatory ceased to hold such office prior to the execution

and delivery of such Receipts by the Registrar or did not hold such office on the date of issuance of such Receipts.

Receipts shall be in denominations of any number of whole Depositary Shares. All Receipts shall be dated the date of their issuance.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary and approved by the Company, or which the Company has determined are required to comply with any applicable law or regulation or with the rules and regulations of any securities exchange upon which the Depositary Shares may be listed for trading or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject, in each case as directed by the Company.

Title to any Receipt (and to the Depositary Shares evidenced by such Receipt) that is properly endorsed, or accompanied by a properly executed instrument of transfer, or endorsement shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that until transfer of a Receipt shall be registered on the books of the Depositary as provided in Section 2.04, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the Person entitled to distributions of dividends or other distributions or payments with respect to the Convertible Preferred Stock, to exercise any voting, or conversion rights or to receive any notice provided for in this Deposit Agreement and for all other purposes.

Notwithstanding the foregoing, all Receipts shall initially be issued in global form for book-entry settlement through DTC. The Company hereby appoints the Depositary acting through any authorized officer thereof as its attorney-in-fact, with full power to delegate, for purposes of executing any agreements, certifications or other instruments or documents necessary or desirable in order to effect and maintain such Receipts for DTC eligibility. So long as the Receipts are eligible for book-entry settlement with DTC, unless otherwise required by law, all Depositary Shares shall be represented by a single receipt (the “**Global Receipt**”), which shall be deposited with DTC (or its custodian) evidencing all such Depositary Shares and registered in the name of the nominee of DTC (initially expected to be Cede & Co.). The Global Receipt shall be in such form and shall bear such legend or legends as may be appropriate or required by DTC in order for it to accept the Depositary Shares for its book-entry settlement system. Wells Fargo Bank, N.A. or such other entity as is agreed to by DTC may hold the Global Receipt as custodian for DTC. Ownership of beneficial interests in the Global Receipt shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) DTC or its nominee for such Global Receipt, or (ii) institutions that have accounts with DTC.

The Global Receipt shall be exchangeable for Definitive Receipts only if (i) DTC notifies the Company at any time that it is unwilling or unable to continue to make its book-entry settlement system available for the Receipts and a successor to DTC is not appointed by the Company within 90 days of the date the Company is so informed in writing or (ii) DTC notifies the Company at any time that it has ceased to be a clearing agency registered under applicable law and

a successor to DTC is not appointed by the Company within 90 days of the date the Company is so informed in writing. The Company shall provide written notice to the Depositary upon receipt of a notice described in cause (i) or (ii) of the preceding sentence. Until such written notice is received by the Depositary, the Depositary may presume conclusively for all purposes that the events described in clause (i) and (ii) of the first sentence of this paragraph have not occurred. If the beneficial owners of interests in Depositary Shares are entitled to exchange such interests for Definitive Receipts as the result of an event described in clause (i), or (ii) of the first sentence of this paragraph, then without unnecessary delay, the Depositary is hereby directed to and shall provide written instructions to DTC to deliver to the Depositary for cancellation the Global Receipt, and the Company shall instruct the Depositary in writing to execute and deliver to the beneficial owners of the Depositary Shares previously evidenced by the Global Receipt Definitive Receipts in physical form evidencing such Depositary Shares.

Notwithstanding any other provision herein to the contrary, delivery of shares of Convertible Preferred Stock and other property in connection with the withdrawal or conversion of Depositary Shares will be made through DTC and in accordance with its procedures, unless the holder of the relevant Receipt otherwise requests and such request is reasonably acceptable to the Depositary and the Company. Upon any such withdrawal or conversion, if requested by the holder of the relevant Receipt, the Company shall take any action reasonably requested by DTC in order for the securities issuable upon conversion or the withdrawn shares of Convertible Preferred Stock, as the case may be, to be eligible for settlement in DTC's book-entry system.

SECTION 2.02 Deposit of Convertible Preferred Stock; Execution and Delivery of Receipts in Respect Thereof.

Concurrently with the execution of this Deposit Agreement, the Company is delivering to the Depositary a certificate or certificates, registered in the name of the Depositary and evidencing 1,265,000 shares of Convertible Preferred Stock, and from time to time the Company may deposit additional certificates registered in the name of the Depositary evidencing shares of Convertible Preferred Stock, in each case properly endorsed or accompanied, if required by the Depositary, by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with (i) all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement and (ii) a written order of the Company directing the Depositary to execute and deliver to, or upon the written order of, the Person or Persons stated in such order a Receipt or Receipts for the Depositary Shares representing such deposited Convertible Preferred Stock registered in such names specified in such written order. Upon receipt of the aforementioned 1,265,000 shares of Convertible Preferred Stock (together with any other shares of Convertible Preferred Stock the Company may deliver) and related documentation the Depositary agrees to hold such deposited Convertible Preferred Stock in an account to be established by the Depositary at the Depositary Office or at such other office as the Depositary shall determine.

If required by the Depositary, Convertible Preferred Stock presented for deposit by the Company at any time, whether or not the register of stockholders of the Company is closed, shall also be accompanied by an agreement or assignment, or other instrument satisfactory to the Depositary, that will provide for the prompt transfer to the Depositary or its nominee of any

dividend or right to subscribe for additional Convertible Preferred Stock or to receive other property that any Person in whose name the Convertible Preferred Stock is or has been registered may thereafter receive upon or in respect of such deposited Convertible Preferred Stock, or in lieu thereof such agreement of indemnity or other agreement as shall be satisfactory to the Depositary.

Upon receipt by the Depositary of a certificate or certificates for Convertible Preferred Stock deposited hereunder, together with the other documents specified above, and upon registering such Convertible Preferred Stock in the name of the Depositary, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver to, or upon the order of, the Person or Persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section 2.02, a Receipt or Receipts for the number of whole Depositary Shares representing the Convertible Preferred Stock so deposited and registered in such name or names as may be requested by such Person or Persons.

The Depositary shall execute and deliver such Receipt or Receipts at the Depositary Office, except that, at the request, risk and expense of any Person requesting such delivery, such delivery may be made at such other place as may be designated by such Person. Other than in the case of splits, combinations or other reclassifications affecting the Convertible Preferred Stock, or in the case of dividends or other distributions of Convertible Preferred Stock, if any, there shall be deposited hereunder not more than the number of shares constituting the Convertible Preferred Stock as set forth in the Certificate of Designations, as such may be amended. To the extent that the Company issues shares of Convertible Preferred Stock in excess of the amount set forth in the Certificate of Designations as of the date hereof (which shares have been validly authorized by the Company), the Company shall notify the Depositary of such issuance in writing. Unless and until such notice is received by the Depositary, the Depositary may presume conclusively for all purposes that the number of shares of Convertible Preferred Stock issued by the Company is not in excess of the amount set forth in the Certificate of Designations as of the date hereof.

The Company shall deliver to the Depositary from time to time such quantities of Receipts as the Depositary may request to enable the Depositary to perform its obligations under this Deposit Agreement.

SECTION 2.03 *No Redemption of Convertible Preferred Stock for Cash.*

The Convertible Preferred Stock shall not be subject to redemption by the Company or at the option of any holder of Convertible Preferred Stock.

SECTION 2.04 *Registration and Transfer of Receipts.*

The Company hereby appoints the Registrar as the registrar and the Transfer Agent as the transfer agent for the Receipts and the Registrar and Transfer Agent hereby accept such appointments and, as such, each shall register on its books from time to time transfers of Receipts upon any surrender thereof by a holder in person or by a duly authorized attorney, agent or representative properly endorsed or accompanied by a properly executed instrument of transfer or endorsement, together with evidence of the payment by the applicable party of any taxes or charges as may be required by law. Upon such surrender, the Depositary shall execute a

new Receipt or Receipts and deliver the same to or upon the order of the Person entitled thereto evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered. Notwithstanding anything contained in this Deposit Agreement to the contrary, neither the Depositary, the Transfer Agent nor the Registrar shall have any duty or obligation under any section of this Deposit Agreement which requires the payment of taxes or charges unless and until it is satisfied that all such taxes and/or charges have been paid.

SECTION 2.05 Combinations and Split-ups of Receipts.

Upon surrender of a Receipt or Receipts at the Depositary Office or such other office as the Depositary may designate for the purpose of effecting a split-up or combination of Receipts, and the receipt by it of all necessary information and documents, subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the authorized denominations requested evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

SECTION 2.06 Surrender of Receipts and Withdrawal of Convertible Preferred Stock.

Any holder of a Receipt or Receipts may withdraw any number of whole shares of deposited Convertible Preferred Stock represented by the Depositary Shares evidenced by such Receipt or Receipts and all money and other property, if any, represented by such Depositary Shares at any time by surrendering such Receipt or Receipts at the Depositary Office or at such other office as the Depositary may designate for such withdrawals. Upon such surrender, upon payment of all taxes and charges in connection with such surrender and withdrawal of Convertible Preferred Stock that are not payable by the Company pursuant to Section 3.05 or 5.07, and subject to the terms and conditions of this Deposit Agreement, without unreasonable delay, the Depositary shall deliver to such holder, or to the Person or Persons designated by such holder as hereinafter provided, the number of whole shares of such Convertible Preferred Stock and all such money and other property, if any, represented by the Depositary Shares evidenced by the Receipt or Receipts so surrendered for withdrawal, but holders of such whole shares of Convertible Preferred Stock will not thereafter be entitled to deposit such Convertible Preferred Stock hereunder or to receive Depositary Shares therefor. If the Receipt or Receipts delivered by the holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of whole shares of deposited Convertible Preferred Stock to be withdrawn, the Depositary shall at the same time, in addition to such number of whole shares of Convertible Preferred Stock and such money and other property, if any, to be withdrawn, deliver to such holder, or upon his order, a new Receipt or Receipts evidencing such excess number of Depositary Shares. Delivery of such Convertible Preferred Stock and such money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate, which, if required by the Depositary, shall be properly endorsed or accompanied by proper instruments of transfer. If the deposited Convertible Preferred Stock and the money and other property being withdrawn are to be delivered to a Person or Persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Convertible Preferred Stock, such holder shall execute and deliver to the Depositary a written

order so directing the Depositary and the Depositary may require that the Receipt or Receipts surrendered by such holder for withdrawal of such shares of Convertible Preferred Stock be properly endorsed in blank or accompanied by a properly executed instrument of transfer or endorsement in blank.

The Depositary shall deliver the deposited Convertible Preferred Stock and the money and other property, if any, represented by the Depositary Shares evidenced by Receipts surrendered for withdrawal at the Depositary Office, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

SECTION 2.07 Limitations on Execution and Delivery, Transfer, Split-up, Combination, Surrender and Exchange of Receipts.

As a condition precedent to the execution and delivery, transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require any or all of the following: (i) payment to it of a sum sufficient for the payment (or, in the event that the Company shall have made such payment, the reimbursement to it) of any tax or other charge and stock transfer or registration fee with respect thereto (including any such tax or charge with respect to the Convertible Preferred Stock being deposited or withdrawn); (ii) the production of proof satisfactory to it as to the identity and genuineness of any signature (or the authority of any signature); and (iii) compliance with such regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement as may be required by any securities exchange on which the deposited Convertible Preferred Stock, the Depositary Shares or the Receipts may be included for quotation or listing.

The deposit of Convertible Preferred Stock may be refused, the delivery of Receipts against Convertible Preferred Stock may be suspended, the transfer of Receipts may be refused, and the transfer, split-up, combination, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed or (ii) if any such action is deemed reasonably necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission, or under any other provision of this Deposit Agreement.

SECTION 2.08 Lost Receipts, etc.

In case any Receipt shall be mutilated and surrendered to the Depositary or destroyed or lost or stolen, the Depositary shall execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt or in lieu of and in substitution for such destroyed, lost or stolen Receipt; provided, that the holder thereof shall have (a) filed with the Depositary a request for such execution and delivery before the Depositary has notice that the Receipt has been acquired by a protected purchaser and (b) provided an indemnity bond to the Depositary and (c) satisfied any other reasonable requirements imposed by the Depositary.

SECTION 2.09 Cancellation and Destruction of Surrendered Receipts.

All Receipts surrendered to the Depositary or any of the Depositary's Agents shall be cancelled by the Depositary, including Receipts surrendered in connection with any conversion of the Convertible Preferred Stock in accordance with the Certificate of Designations, subject, in the case of conversion, to the right of record holders of such Receipts to receive (a) the distributions in respect of such conversion under Section 4.01 or 4.02 and (b) new Receipts evidencing the Depositary Shares as to which such conversion was not effected under SECTION 2.10 or SECTION 2.11. Except as prohibited by applicable law or regulation, the Depositary is authorized, but not required, to destroy such Receipts so cancelled. In addition, following the Mandatory Conversion of outstanding Convertible Preferred Stock pursuant to Section 6 of the Certificate of Designations, all Receipts evidencing Depositary Shares corresponding to the Convertible Preferred Stock so converted shall be deemed cancelled on the relevant Conversion Date, subject to the right of record holders of such Receipts to receive (a) the distributions in respect of such conversion under Section 4.01 or 4.02 and (b) new Receipts evidencing the Depositary Shares as to which such Mandatory Conversion was not effected under SECTION 2.11.

SECTION 2.10 Conversion at the Option of Holders after Satisfaction of Authorized Share Condition.

Subject to the terms and conditions of this Deposit Agreement, provided that the Authorized Share Condition is satisfied, the record holder of any Receipt may, at any time that Convertible Preferred Stock may be converted pursuant to Section 7 or 8 of the Certificate of Designations, surrender such Receipt at the Depositary Office or such other office as the Depositary may from time to time designate for such purpose together with a notice of conversion properly completed and duly executed and a proper assignment of such Receipt to the Company or the Transfer Agent or in blank to the Depositary or any of the Depositary's Agents, thereby instructing the Depositary to cause the conversion of a specified number (the "**Conversion Number**") of whole shares of Convertible Preferred Stock represented by the Depositary Shares evidenced by such Receipt in accordance with the applicable provisions in the Certificate of Designations, (as confirmed in writing by the Company) and specifying the name in which such holder desires the shares of Common Stock or units of Exchange Property issuable upon conversion to be registered and specifying payment instructions.

The Depositary shall be deemed to have no knowledge of the Conversion Number unless and until it shall have actually received written notice thereof from the Company, and shall have no duty or obligation to investigate or inquire as to whether any Conversion Number contained in any such written notice is accurate, or whether it complies with the Certificate of Designations. If specified by the holder in such notice of conversion that shares of Common Stock or other securities issuable upon conversion of the Depositary Shares shall be issued to a Person other than the holder surrendering the Receipt for the Depositary Shares being converted, then the holder shall pay or cause to be paid any transfer or similar taxes payable in connection with the shares of Common Stock or other securities so issued that are not payable by the Company pursuant to the Certificate of Designations or Section 3.05. In addition, the holder shall provide any other transfer forms, tax forms or other relevant documentation required and

specified by the Transfer Agent for the Convertible Preferred Stock, if necessary, to effect the conversion.

Upon fulfillment of the requirements in the foregoing paragraph, the Depositary is hereby authorized and instructed to, and shall, as promptly as practicable, (a) give written notice to the Transfer Agent for the Convertible Preferred Stock of (i) the Conversion Number (as specified in writing by the Company), (ii) the number of shares of Common Stock or units of Exchange Property to be delivered upon conversion of such Conversion Number of shares of Convertible Preferred Stock (each as specified in writing by the Company), (iii) the amount of immediately available funds (as specified in writing by the Company), if any, to be delivered to the holder of such Receipts in payment of any fractional shares of Common Stock or other securities otherwise issuable and (iv) the amount of cash or other property (as specified in writing by the Company), if any, to be delivered to the holder of such Receipts in respect of accrued and unpaid dividends payable by the Company upon conversion of such shares of Convertible Preferred Stock pursuant to the Certificate of Designations, (b) cancel Receipts or, if a Registrar for Receipts (other than the Depositary) shall have been appointed, cause such Registrar to cancel such Receipt, and (c) surrender to the Transfer Agent for the Convertible Preferred Stock or any other authorized agent of the Company for conversion in accordance with the Certificate of Designations (as specified in writing by the Company) certificates for the Convertible Preferred Stock represented by Depositary Shares as evidenced by such Receipt, together with delivery to the Company or the appropriate agent of the Company (pursuant to written instructions from the Company) any other information or payment required by the Certificate of Designations (as specified in writing by the Company) for such conversion, and such certificates shall thereupon be canceled by the Transfer Agent or other authorized agent. The Depositary shall have no duty or obligation to investigate or inquire as to whether the Company provided it with the correct number of shares of Common Stock or units of Exchange Property to be delivered upon any conversion, or the correct amount of funds, cash or other property to be delivered in payment of any fractional shares of Common Stock or other securities otherwise issuable or in respect of accrued and unpaid dividends payable by the Company upon any conversion, and the Depositary may rely conclusively on any such information provided by the Company.

As promptly as practicable after the Transfer Agent or other authorized agent of the Company has received such certificates from the Depositary, (a) the Company shall cause to be furnished to the Depositary (i) a certificate or certificates evidencing such number of shares of Common Stock or securities included in the Exchange Property, as the case may be, to be delivered upon conversion of the Conversion Number of shares of Convertible Preferred Stock and to be delivered in respect of accrued and unpaid dividends payable by the Company upon conversion of such shares of Convertible Preferred Stock pursuant to the Certificate of Designations, if any, (ii) such amount of immediately available funds, if any, to be delivered in respect of accrued and unpaid dividends payable by the Company upon conversion of such shares of Convertible Preferred Stock pursuant to the Certificate of Designations, and (iii) such amount of immediately available funds, if any, to be delivered in lieu of receiving fractional shares and any other property included in the Exchange Property, in each case as specified in a written notice from the Company and (b) the Depositary is hereby authorized and instructed to, and shall, deliver at the Depositary Office, (i) a certificate or certificates evidencing the sum of (x) the number of shares of Common Stock into which the Convertible Preferred Stock

represented by Depositary Shares as evidenced by such Receipt has been converted and (y) the number of shares of Common Stock or securities included in the Exchange Property, as the case may be, payable by the Company upon such conversion on account of accrued and unpaid dividends pursuant to the Certificate of Designations to the extent (if any) that the Company has elected to pay such accrued and unpaid dividends in shares of Common Stock, in each case as specified in writing by the Company and which has been provided by the Company, (ii) any other property included in the Exchange Property (as specified in writing by the Company and which has been provided by the Company) and (iii) an amount of cash equal to the sum of (x) the amount of cash payable by the Company upon such conversion on account of accrued and unpaid dividends pursuant to the Certificate of Designations to the extent (if any) that the Company has elected to pay such dividends in cash and (y) the amount of cash payable by the Company in lieu of delivering fractional shares of Common Stock or other securities pursuant to Section 10 of the Certificate of Designations, in each case as specified in writing by the Company and which has been provided by the Company.

If the holder surrenders a Receipt in connection with a conversion of Convertible Preferred Stock pursuant to Section 7 of the Certificate of Designations and the applicable Conversion Date occurs during the period from the close of business on a Regular Record Date for any declared dividend to the open of business on the immediately following Dividend Payment Date, such holder shall remit to the Depositary with such Receipt, for payment to the Company, an amount of funds equal to the dividend for the then-current Dividend Period with respect to such shares of Convertible Preferred Stock computed and paid as set forth in the Certificate of Designations, to the extent required thereunder. The Depositary shall have no duty or obligation to investigate or inquire whether Receipts representing shares of Convertible Preferred Stock are surrendered for conversion between the close of business on a Regular Record Date and the open of business on the immediately following Dividend Payment Date, or whether the amount of funds, if any, submitted by the holder of the Receipts is equal to the dividend payable on the related Convertible Preferred Stock on such Dividend Payment Date or whether such amount was computed and paid as set forth in the Certificate of Designations.

In the event that a holder of a surrendered Receipt elects to convert less than all Depositary Shares evidenced by such Receipt under this Section 2.10, upon such conversion, the Depositary shall, if requested in writing and provided with all necessary information and documents, authenticate, countersign and deliver to such holder thereof, at the expense of the Company, a new Receipt evidencing the Depositary Shares as to which such conversion was not effected.

Delivery of shares of Common Stock and other property following a conversion pursuant to this Section 2.10 may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate, which, if required by the Depositary, shall be properly endorsed or accompanied by proper instruments of transfer. If such delivery is to be made otherwise than at the Depositary Office, such delivery shall be made, as hereinafter provided, without unreasonable delay, at the risk of any holder surrendering Receipts, and for the account of such holder, to such place designated in writing by such holder.

SECTION 2.11 Conversion prior to Satisfaction of Authorized Share Condition.

Subject to the terms and conditions of this Deposit Agreement, if the Authorized Share Condition has not been satisfied on the relevant Conversion Date but the Company has sufficient Designated Shares to convert all shares of Convertible Preferred Stock tendered for conversion on such date in accordance with the applicable provisions in the Certificate of Designations, then any conversion of Convertible Preferred Stock represented by the Depositary Shares shall be effected in accordance with SECTION 2.09 and SECTION 2.10, as applicable.

If the Authorized Share Condition has not been satisfied on the relevant Conversion Date and the Company does not have sufficient Designated Shares to convert all shares of Convertible Preferred Stock tendered for conversion on such date in accordance with the applicable provisions in the Certificate of Designations, then notwithstanding the forgoing, the Depositary, at the instruction of the Company, shall select, for each record holder of a Receipt, Depositary Shares to be converted in such amounts as are, as nearly as practicable, in proportion to the Conversion Number specified by each such holder (or in the case of a Mandatory Conversion, the number of outstanding Depositary Shares held by each such holder). If such conversion on a *pro rata* basis is not practical or cannot be implemented under DTC's then-existing procedures, the Depositary, at the instruction of the Company, shall select the Depositary Shares to be converted (in whole shares) by lot or by another method it considers fair and appropriate so long as such method is not prohibited by the rules of any stock exchange or quotation system on which the Depositary Shares may then be traded or quoted. Any conversion of Depositary Shares selected by the Depositary shall be effected, as closely as practicable, in accordance with the procedures set forth in SECTION 2.09 and SECTION 2.10, as applicable.

In the event that less than all Depositary Shares evidenced by such Receipt are selected for conversion by the Depositary upon a Mandatory Conversion or Optional Conversion, upon such conversion, the Depositary shall, if requested in writing and provided with all necessary information and documents, authenticate, countersign and deliver to such holder thereof, at the expense of the Company, a new Receipt evidencing the Depositary Shares as to which such conversion was not effected.

In the event that less than all Depositary Shares evidenced by such Receipt are selected for conversion by the Depositary upon a Fundamental Change Conversion, the Depositary shall, if requested in writing and provided with all necessary information and documents, authenticate, countersign and deliver to such holder thereof, at the expense of the Company, either a certificate representing shares of Fundamental Change Preferred Stock in proportion to the liquidation preference of the Depositary Shares as to which such conversion was not effected or a new Receipt evidencing a new series of depositary shares representing such shares of Fundamental Change Preferred Stock.

SECTION 2.12 *Fractional Shares.*

No fractional shares of Common Stock or any other security will be issued to a holder of the Depositary Shares upon conversion or as a result of any distribution pursuant to SECTION 2.10, SECTION 2.11 or Section 4.02. If more than one share of Convertible Preferred Stock represented by Depositary Shares as evidenced by Receipts held by the same holder shall be surrendered for conversion or entitled to a distribution pursuant to Section 4.02 at one time, the

number of full shares of Common Stock or other security issuable upon conversion thereof or upon the relevant distribution, as applicable, shall be computed on the basis of the aggregate number of shares of Convertible Preferred Stock so surrendered or entitled to such distribution. Whenever a payment in lieu of fractional shares is to be made by the Depositary, the Company shall (i) promptly prepare and deliver to the Depositary a certificate setting forth in reasonable detail the facts related to such payments and the prices and/or formulas utilized in calculating such payments, and (ii) provide sufficient cash to the Depositary in the form of fully collected funds to make such payments. The Depositary shall be fully protected in relying upon such a certificate and shall have no duty with respect to, and shall not be deemed to have knowledge of, any payment in lieu of fractional shares under any Section of this Deposit Agreement relating to the payment of fractional shares unless and until the Depositary shall have received such a certificate and sufficient cash. If the amount of cash required to be distributed by the Depositary in lieu of fractional shares exceeds the amount of cash received by the Depositary in lieu of fractional shares pursuant to Section 11 of the Certificate of Designations, then the Depositary, any of the Depositary's Agents or any other entity as so instructed in writing by the Company, on behalf of all holders of Receipts entitled to fractional shares shall, as soon as practicable after the distribution date, sell the minimum number of such shares on the open market such that each such record holder will be entitled to receive, in lieu of a fractional share, an amount in cash, rounded to the nearest cent, equal to such record holder's proportionate interest in the net proceeds from such sale. The Depositary shall have no duty or obligation to investigate or inquire whether the amounts of funds paid by the Company to the Depositary for the benefit of any holder in connection with such a conversion are correct.

SECTION 2.13 *No Pre-Release.*

The Depositary shall not deliver any deposited Convertible Preferred Stock represented by Depositary Shares evidenced by Receipts prior to the receipt and cancellation of such Receipts or other similar method used with respect to Receipts held by DTC. The Depositary shall not issue any Receipts prior to the receipt by the Depositary of the Convertible Preferred Stock corresponding to Depositary Shares evidenced by such Receipts. At no time will any Receipts be outstanding if such Receipts do not evidence Depositary Shares representing Convertible Preferred Stock deposited with the Depositary, subject to the rights of holders to receive distributions upon conversion of the deposited Convertible Preferred Stock pursuant to Section 4.01 or 4.02.

**ARTICLE 3
CERTAIN OBLIGATIONS OF HOLDERS OF RECEIPTS AND THE COMPANY**

SECTION 3.01 *Filing Proofs, Certificates and Other Information.*

Any Person presenting Convertible Preferred Stock for deposit or any holder of a Receipt may be required from time to time to file with the Depositary such proof of residence, guarantee of signature or other information and to execute such certificates as the Depositary may reasonably deem necessary or proper or the Company may reasonably require by written request to the Depositary. The Depositary or the Company may withhold or delay the delivery of any Receipt, the transfer or exchange of any Receipt, the withdrawal of the deposited Convertible

Preferred Stock represented by the Depositary Shares evidenced by any Receipt, the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof, until such proof or other information is filed, or such certificates are executed.

SECTION 3.02 Payment of Fees and Expenses.

Holders of Receipts shall be obligated upon any transfer of Receipts or withdrawal of deposited Convertible Preferred Stock to provide evidence satisfactory to the Depositary that any applicable taxes or other charges not payable by the Company pursuant to Section 3.05 have been paid. Until such payment is made, transfer of any Receipt or any withdrawal of the Convertible Preferred Stock or money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused, any dividend or other distribution may be withheld, and any part or all of the Convertible Preferred Stock or other property represented by the Depositary Shares evidenced by such Receipt may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder a reasonable number of days prior to such sale). Any dividend or other distribution so withheld and the proceeds of any such sale may be applied to any payment of such taxes or other charges, the holders remaining liable for any deficiency.

SECTION 3.03 Representations and Warranties as to Convertible Preferred Stock.

In the case of the initial deposit of the Convertible Preferred Stock hereunder, the Company represents and warrants that such Convertible Preferred Stock and each certificate therefor are validly issued, fully paid and nonassessable. Such representations and warranties shall survive the deposit of the Convertible Preferred Stock and the issuance of Receipts.

SECTION 3.04 Representation and Warranty as to Receipts and Depositary Shares.

The Company hereby represents and warrants that the Receipts, when issued, will evidence legal and valid interests in the Depositary Shares and each Depositary Share will represent a legal and valid 1/20th fractional interest in a share of deposited Convertible Preferred Stock. Such representation and warranty shall survive the deposit of the Convertible Preferred Stock and the issuance of Receipts evidencing the Depositary Shares.

SECTION 3.05 Taxes.

The Company will pay any and all stock transfer, documentary, stamp and similar taxes and charges that may be payable in respect of any issuance or delivery of Depositary Shares or shares of Convertible Preferred Stock, Common Stock or other securities issued on account of Depositary Shares or certificates representing such shares or securities. The Company will not, however, be required to pay any such tax or charge that may be payable in respect of any transfer involved in the issuance or delivery of shares of Convertible Preferred Stock, Depositary Shares, shares of Common Stock or other securities in a name other than that in which the Depositary Shares with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any Person other than a payment to the registered holder thereof, and will 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 Company the amount of any such tax or charge or has established, to the satisfaction of the Company and the Depositary, that such tax or charge has been paid or is not payable.

SECTION 3.06 *Listing.*

The Company hereby covenants and agrees that it will apply to list the Depositary Shares on the New York Stock Exchange and it expects the trading on the New York Stock Exchange to begin within five days of the date hereof. In addition, upon such listing, the Company hereby covenants and agrees that it will use reasonable best efforts to keep the Depositary Shares listed on the New York Stock Exchange.

ARTICLE 4
THE CONVERTIBLE PREFERRED STOCK; NOTICES

SECTION 4.01 *Cash Distributions.*

Whenever the Depositary shall receive (i) any cash dividend or other cash distribution on the deposited Convertible Preferred Stock (other than any cash distribution in respect of accrued and unpaid dividends on account of any conversion of the Convertible Preferred Stock pursuant to Section 6, 7 or 8 of the Certificate of Designations), (as specified in writing by the Company) the Depositary shall, subject to Section 3.02, distribute on the date it receives such dividend or distribution or as soon as practicable thereafter to record holders of Receipts as of the record date fixed pursuant to Section 4.04 such amounts of such dividend or distribution as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders or (ii) any cash distribution in respect of accrued and unpaid dividends on account any conversion of the deposited Convertible Preferred Stock pursuant to Section 6, 7 or 8 of the Certificate of Designations, (as specified in writing by the Company), the Depositary shall, subject to Section 3.02, distribute on the date that it receives such distribution or as soon as practicable thereafter to holders of Receipts as of the applicable Conversion Date such amounts of such cash distribution as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares entitled to receive such distribution evidenced by the Receipts held by such holders; provided, however, in either case, that in case the Company or the Depositary shall be required by law to and shall withhold from any cash dividend or other cash distribution in respect of the Convertible Preferred Stock represented by the Receipts held by any holder an amount on account of taxes or as otherwise required by law, regulation or court process, the amount made available for distribution or distributed in respect of Depositary Shares represented by such Receipts subject to such withholding shall be reduced accordingly. The Depositary, however, shall distribute or make available for distribution, as the case may be, only such amount as can be distributed without attributing to any holder of Receipts a fraction of one cent. Any such fractional amounts shall be rounded down to the nearest whole cent and so distributed to registered holders entitled thereto and any balance not so distributable shall be held by the Depositary (without liability for interest thereon) and shall be added to and be treated as part of the next succeeding distribution to record holders of such Receipts. Each holder of a Receipt shall provide the Depositary with a properly completed Form W-8 (i.e., Form W-8BEN, Form W-8EXP, Form W-8IMY, Form W8ECI or another applicable Form W-8) or Form W-9

(which form shall set forth such holder's certified taxpayer identification number if requested on such form), as may be applicable. Each holder of a Receipt acknowledges that, in the event of non-compliance with the preceding sentence the Internal Revenue Code of 1986 as amended, may require withholding by the Depositary of a portion of any of the distribution to be made hereunder.

SECTION 4.02 *Distributions Other Than Cash.*

Whenever the Depositary shall receive any distribution other than cash on the deposited Convertible Preferred Stock (other than any such distribution in connection with any conversion of the Convertible Preferred Stock pursuant to Section 6, 7 or 8 of the Certificate of Designations, as specified in writing by the Company, including on account of accrued and unpaid dividends), the Depositary shall, subject to Section 3.02, distribute on the date it receives such distribution or as soon as practicable thereafter to record holders of Receipts as of the record date fixed pursuant to Section 4.04 such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary and the Company may deem equitable and practicable for accomplishing such distribution. Whenever the Depositary shall receive any distribution other than cash on the deposited Convertible Preferred Stock in connection with any conversion of the Convertible Preferred Stock pursuant to Section 6, 7 or 8 of the Certificate of Designations (as specified in writing by the Company), including on account of accrued and unpaid dividends, the Depositary shall, subject to Section 3.02, distribute on the date it receives such distribution or as soon as practicable thereafter, to record holders of Receipts as of the applicable Conversion Date such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares entitled to receive such distribution evidenced by the Receipts held by such holders, in any manner that the Depositary and the Company may deem equitable and practicable for accomplishing such distribution. The Person or Persons entitled to receive any Common Stock issuable upon any conversion shall be treated for all purposes as the record holder(s) of such shares of Common Stock as of the close of business on the applicable Conversion Date.

Delivery of shares of Common Stock and other property pursuant to this Section 4.02 may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate, which, if required by the Depositary, shall be properly endorsed or accompanied by proper instruments of transfer. If such delivery is to be made otherwise than at the Depositary Office, such delivery shall be made, as hereinafter provided, without unreasonable delay, at the risk of any holder surrendering Receipts, and for the account of such holder, to such place designated in writing by such holder.

SECTION 4.03 *Subscription Rights, Preferences or Privileges.*

If the Company shall at any time offer or cause to be offered to the Persons in whose names deposited Convertible Preferred Stock is registered on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of Receipts in such

manner as the Company shall instruct (including by the issue to such record holders of warrants representing such rights, preferences or privileges); provided, however, that (a) if at the time of issue or offer of any such rights, preferences or privileges the Company determines upon advice of its legal counsel that it is not lawful or feasible to make such rights, preferences or privileges available to the holders of Receipts (by the issue of warrants or otherwise) or (b) if and to the extent instructed by holders of Receipts who do not desire to exercise such rights, preferences or privileges, the Depositary shall then, if so directed by the Company and provided with an opinion of counsel that such rights, preferences or privileges have been registered under the Securities Act or do not need to be registered and that if Depositary undertakes such actions it will not be deemed an “issuer” under the Securities Act or an “investment company” under the Investment Company Act of 1940, as amended, and if applicable laws or the terms of such rights, preferences or privileges so permit, sell such rights, preferences or privileges of such holders at public or private sale, at such place or places and upon such terms as it may deem proper. The Company covenants that it will not offer or cause to be offered any such rights, preferences or privileges unless it is able to provide such an opinion of counsel; provided that this provision is solely for the benefit of the holders and does not constitute a waiver of any rights that the holders may have under the Certificate of Incorporation, applicable law or otherwise. The net proceeds of any such sale shall, subject to Section 3.01 and Section 3.02, be distributed by the Depositary to the record holders of Receipts entitled thereto as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall not make any distribution of such rights, preferences or privileges, unless the Company shall have provided to the Depositary an opinion of counsel stating that such rights, preferences or privileges have been registered under the Securities Act or do not need to be registered.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company agrees that it will promptly notify the Depositary of such requirement that it will promptly file a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its commercially reasonable efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such a registration statement shall have become effective or unless the offering and sale of such securities to such holders are exempt from registration under the provisions of the Securities Act and the Company shall have provided to the Depositary an opinion of counsel to such effect.

If any other action under the law of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company agrees that it will promptly notify the Depositary of such requirement and to use its commercially reasonable efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

The Depositary will not be deemed to have any knowledge of any item for which it is supposed to receive notification under any Section of this Deposit Agreement unless and until it has received such notification.

SECTION 4.04 *Notice of Dividends; Fixing of Record Date for Holders of Receipts.*

Whenever any cash dividend or other cash distribution shall become payable, any distribution other than cash shall be made, or any rights, preferences or privileges shall at any time be offered, with respect to the deposited Convertible Preferred Stock, or whenever the Depositary shall receive notice of any meeting at which holders of such Convertible Preferred Stock are entitled to vote or of which holders of such Convertible Preferred Stock are entitled to notice, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Company with respect to the Convertible Preferred Stock) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to vote at such meeting.

SECTION 4.05 *Voting Rights.*

Upon receipt from the Company of notice of any meeting at which the holders of deposited Convertible Preferred Stock are entitled to vote (including matters submitted to holders of the Common Stock as set forth in the Certificate of Designations), the Depositary shall, if requested in writing and provided with all necessary information and documents, as soon as practicable thereafter, mail to the record holders of Receipts a notice, which shall be provided by the Company and which shall contain (i) such information as is contained in such notice of meeting, (ii) a statement that the holders of Receipts at the close of business on a specified record date fixed pursuant to Section 4.04 will be entitled, subject to any applicable provision of law, to instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Convertible Preferred Stock represented by their respective Depositary Shares and (iii) a brief statement as to the manner in which such instructions may be given. Upon the written request of the holders of Receipts on such record date, (which shall be the same date as the record date fixed by the Company with respect to the Convertible Preferred Stock), the Depositary shall insofar as practicable vote or cause to be voted, in accordance with the instructions set forth in such requests, the maximum number of whole shares of Convertible Preferred Stock represented by the Depositary Shares evidenced by all Receipts as to which any particular voting instructions are received. To the extent any such instructions request the voting of a fractional interest of a share of deposited Convertible Preferred Stock, the Depositary shall aggregate such interest with all other fractional interests resulting from requests with the same voting instructions and shall vote the number of whole votes resulting from such aggregation in accordance with the instructions received in such requests. The Company hereby agrees to take all reasonable action that may be deemed necessary by the Depositary in order to enable the Depositary to vote such Convertible Preferred Stock or cause such Convertible Preferred Stock to be voted in accordance with the instructions received by the Depositary. In the absence of specific instructions from the holder of a Receipt, the Depositary will not vote the shares of Convertible Preferred Stock that are represented by the Depositary Shares evidenced by such Receipt.

SECTION 4.06 *Changes Affecting Convertible Preferred Stock and Reorganization Events.*

Upon any change in liquidation preference, par or stated value, split-up, combination or any other reclassification of the Convertible Preferred Stock, any Reorganization Event or any exchange of the Convertible Preferred Stock for cash, securities or other property, the Depositary shall, upon the written instructions of the Company setting forth any of the following adjustments, (i) reflect such adjustments in the Depositary's books and records in (a) the fraction of an interest represented by one Depositary Share in one share of Convertible Preferred Stock and (b) the ratio of the conversion rate per Depositary Share to the conversion rate of a share of Convertible Preferred Stock as may be required by or as is consistent with the provisions of the Certificate of Designations to fully reflect the effects of such change in liquidation preference, par or stated value, split-up, combination or other reclassification of Convertible Preferred Stock, of such Reorganization Event or of such exchange and (ii) subject to the last sentence of this Section 4.06, treat any shares of stock or other securities or property (including cash) that shall be received by the Depositary in exchange for or in respect of the Convertible Preferred Stock as new deposited property under this Deposit Agreement, and Receipts then outstanding shall thenceforth represent the proportionate interests of holders thereof in the new deposited property so received in exchange for or in respect of such Convertible Preferred Stock. In any such case the Depositary may, upon the receipt of written request of the Company, execute and deliver additional Receipts, or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited property. Notwithstanding the foregoing, the Common Stock or other Exchange Property issuable upon conversion of the Convertible Preferred Stock pursuant to Section 5, 6 or 7 of the Certification of Designations (or their successors) shall not be treated as new deposited property under this Deposit Agreement and instead the provisions in Section 2.10 and Section 4.02 shall apply.

SECTION 4.07 *Inspection of Reports.*

The Depositary shall make available for inspection by holders of Receipts at the Depositary Office and at such other places as it may from time to time deem advisable during normal business hours any reports and communications received from the Company that are both received by the Depositary as the holder of deposited Convertible Preferred Stock and made generally available to the holders of the Convertible Preferred Stock. In addition, the Depositary shall transmit, upon written request by the Company, certain notices and reports to the holders of Receipts as provided in Section 5.05.

SECTION 4.08 *Lists of Receipt Holders.*

Promptly upon request from time to time by the Company, the Registrar shall furnish to the Company a list, as of a recent date specified by the Company, of the names, addresses and holdings of Depositary Shares of all Persons in whose names Receipts are registered on the books of the Registrar.

SECTION 4.09 *Withholding.*

Notwithstanding any other provision of this Deposit Agreement, in the event that the Depositary determines that any distribution in property is subject to any tax or other charge which the Depositary is obligated by law to withhold, the Depositary may dispose of, by public or private sale, all or a portion of such property in such amounts and in such manner as the Depositary deems necessary and practicable to pay such taxes, and the Depositary shall distribute the net proceeds of any such sale or the balance of any such property after deduction of such taxes to the holders of Receipts entitled thereto in proportion to the number of Depositary Shares held by them, respectively; provided, however, that in the event the Depositary determines that such distribution of property is subject to withholding tax only with respect to some but not all holders of Receipts, the Depositary will use its best efforts (i) to sell only that portion of such property distributable to such holders that is required to generate sufficient proceeds to pay such withholding tax and (ii) to effect any such sale in such a manner so as to avoid affecting the rights of any other holders of Receipts to receive such distribution in property.

ARTICLE 5 THE DEPOSITARY AND THE COMPANY

SECTION 5.01 *Maintenance of Offices, Agencies and Transfer Books by the Depositary and the Registrar.*

The Depositary shall maintain at the Depositary Office facilities for the execution and delivery, transfer, surrender and exchange, split-up and combination of Receipts and deposit and withdrawal of Convertible Preferred Stock and at the offices of any of the Depositary's Agents, if any, facilities for the delivery, transfer, surrender and exchange, split-up and combination of Receipts and deposit and withdrawal of Convertible Preferred Stock, all in accordance with the provisions of this Deposit Agreement.

The Registrar shall keep books at the Depositary Office for the registration and transfer of Receipts, which books at all reasonable times shall be open for inspection by the record holders of Receipts as provided by applicable law. The Company may cause the Registrar to close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

If the Receipts or the Depositary Shares evidenced thereby or the Convertible Preferred Stock represented by such Depositary Shares shall be listed on the New York Stock Exchange, Inc. or any other stock exchange, the Depositary may, with the written approval of the Company, appoint a registrar (acceptable to the Company) for registration of such Receipts or Depositary Shares in accordance with the requirements of such exchange. Such registrar (which may be the Registrar if so permitted by the requirements of such exchange) may be removed and a substitute registrar appointed by the Registrar upon the request or with the written approval of the Company. If the Receipts, such Depositary Shares or such Convertible Preferred Stock are listed on one or more other stock exchanges, the Registrar will, at the request and expense of the Company, arrange such facilities for the delivery, transfer, surrender and exchange of such Receipts, such Depositary Shares or such Convertible Preferred Stock as may be required by law or applicable stock exchange regulations.

SECTION 5.02 *Prevention or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Company.*

None of the Depositary, any of the Depositary's Agents, the Registrar, the Transfer Agent or the Company shall incur any liability to any holder of any Receipt, if by reason of any provision of any present or future law or regulation thereunder of the United States of America or of any other governmental authority or, in the case of the Depositary, any of the Depositary's Agents, the Registrar or Transfer Agent, by reason of any provision, present or future, of the Certificate of Incorporation or, in the case of the Company, the Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar, by reason of any acts of God, fire, war, terrorism, floods, strikes, civil or military disorder, work stoppage, accident, electrical outages, equipment or transmission failure, failure or malfunction of any utilities, means of communication or computer (software or hardware) services, the unavailability of the Federal Reserve Bank, or other circumstance beyond the control of the relevant party, the Depositary, any of the Depositary's Agents, the Transfer Agent, the Registrar or the Company shall be prevented or forbidden from doing or performing any act or thing that the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any of the Depositary's Agents, the Transfer Agent, the Registrar or the Company incur any liability to any holder of a Receipt by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing that the terms of this Deposit Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement.

SECTION 5.03 *Obligations of the Depositary, the Depositary's Agents and the Registrar.*

Neither the Depositary nor any of the Depositary's Agents nor the Transfer Agent or the Registrar assumes any obligation or shall be subject to any liability under this Deposit Agreement to holders of Receipts, the Company or any other Person or entity other than for its bad faith, gross negligence or willful misconduct (which bad faith, gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). Notwithstanding anything to the contrary contained herein, neither the Depositary, nor any of the Depositary's Agents nor the Transfer Agent or the Registrar shall be liable for any special, indirect, incidental, consequential, punitive or exemplary losses or damages, of any kind whatsoever, to any Person, including but not limited to, lost profits, even if such Person alleged to be liable has knowledge of the possibility of such damages or been advised of the likelihood of such loss or damage and regardless of the form of action. Any liability of the Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar under this Deposit Agreement shall be limited to the amount of annual fees paid by the Company to such Person.

None of the Depositary, any of the Depositary's Agents, the Registrar or Transfer Agent shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding with respect to the deposited Convertible Preferred Stock, Depositary Shares or Receipts that in its opinion may involve it in expense or liability, unless indemnity satisfactory to it against all expense and liability be furnished as often as may be required.

None of the Depositary, any of Depositary's Agents, the Registrar or Transfer Agent shall be liable for any action or any failure to act by it in reliance upon the advice of legal counsel or accountants, or information provided by any Person presenting Convertible Preferred Stock for deposit or any holder of a Receipt. The Depositary, any of the Depositary's Agents, the Registrar and the Transfer Agent may each rely and shall each be protected in acting upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

In the event the Depositary shall receive conflicting claims, requests or instructions from any holders of Receipts, on the one hand, and the Company, on the other hand, the Depositary shall be entitled to act on such claims, requests or instructions received from the Company, and shall incur no liability and shall be entitled to the full indemnification set forth in Section 5.06 in connection with any action so taken.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the deposited Convertible Preferred Stock or for the manner or effect of any such vote made, as long as any such action or non-action does not result from bad faith, gross negligence or willful misconduct of the Depositary (which bad faith, gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Depositary undertakes, and the Registrar and the Transfer Agent shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or the Registrar or the Transfer Agent.

The Depositary, its parents, affiliates or subsidiaries, any of the Depositary's Agents, the Registrar or the Transfer Agent may own, buy, sell or deal in any class of securities of the Company and its affiliates and in Receipts or Depositary Shares or become pecuniarily interested in any transaction in which the Company or its affiliates may be interested or contract with or lend money to or otherwise act as fully or as freely as if it were not the Depositary, the Depositary's Agent, the Registrar or the Transfer Agent hereunder. The Depositary, any of the Depositary's Agents, the Registrar or the Transfer Agent may also act as transfer agent or registrar of any of the securities of the Company and its affiliates or act in any other capacity for the Company or its affiliates.

It is intended that neither the Depositary nor any of the Depositary's Agents shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any of the Depositary's Agents are acting only in a ministerial capacity as Depositary for the deposited Convertible Preferred Stock; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

Neither the Depositary (or its officers, directors, employees, agents or affiliates) nor any of the Depositary's Agents makes any representation or has any responsibility as to the validity of the registration statement pursuant to which the Depositary Shares are registered under the Securities Act, the deposited Convertible Preferred Stock, the Depositary Shares, the Receipts

(except its countersignature thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made therein or herein; provided, however, that the Depositary is responsible for its representations in this Deposit Agreement.

The Company agrees that it has registered the deposited Convertible Preferred Stock and the Depositary Shares in accordance with the applicable securities laws.

In the event the Depositary, any of the Depositary's Agents, the Registrar or the Transfer Agent believes any ambiguity or uncertainty exists in any notice, instruction, direction, request or other communication, paper or document received by it pursuant to this Deposit Agreement, such Person shall promptly notify the Company of the details of such alleged ambiguity or uncertainty, and may, in its sole discretion, refrain from taking any action, and such Person shall be fully protected and shall incur no liability to any Person from refraining from or for taking such action, absent bad faith, gross negligence or willful misconduct (which bad faith, gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction), unless and until (i) the rights of all parties have been fully and finally adjudicated by a court of appropriate jurisdiction or (ii) such Person receives written instructions with respect to such matter signed by the Company that eliminates such ambiguity or uncertainty to the satisfaction of such Person.

Whenever in the performance of its duties under this Deposit Agreement, the Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided and established by a certificate signed by any one of the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or Assistant Secretary of the Company and delivered to the Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar; and such certificate shall be full and complete authorization and protection to the Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar and the Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Deposit Agreement in reliance upon such certificate. The Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar shall not be liable for or by reason of any of the statements of fact or recitals contained in this Deposit Agreement or in the Receipts (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

Neither the Depositary, any of the Depositary's Agents, the Transfer Agent nor the Registrar will be under any duty or responsibility to ensure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of the Receipts, Convertible Preferred Stock or Depositary Shares.

Notwithstanding anything herein to the contrary, no amendment to the Certificate of Designations shall affect the rights, duties, obligations or immunities of the Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar hereunder.

The Depositary, the Transfer Agent and the Registrar hereunder:

(i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;

(ii) shall have no obligation to make payment hereunder unless the Company shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full amounts due and payable with respect thereto;

(iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary, the Transfer Agent or the Registrar determines to take any legal or other action hereunder, and, where the taking of such action might in such Person's judgment subject or expose it to any expense or liability, it shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;

(iv) may rely on and shall be authorized and protected in acting or omitting to act upon any certificate, instrument, opinion, notice, letter, facsimile transmission or other document or security delivered to it and believed by it to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;

(v) may rely on and shall be authorized and protected in acting or omitting to act upon the written, telephonic, electronic and oral instructions, with respect to any matter relating to the Depositary's, the Transfer Agent's or the Registrar's actions as depositary, transfer agent or registrar covered by this Deposit Agreement (or supplementing or qualifying any such actions), of officers of the Company;

(vi) may consult counsel satisfactory to it (who may be an employee of the Depositary, the Transfer Agent or the Registrar), and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in accordance with the advice of such counsel;

(vii) shall not be called upon at any time to advise any Person with respect to the Depositary Shares or Receipts;

(viii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the Depositary Shares or Receipts; and

(ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to its own) executing or delivering or purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.

The obligations of the Company set forth in this Section 5.03 shall survive the replacement, removal or resignation of any Depositary, Registrar, Transfer Agent or any of the Depositary's Agents or the termination of this Deposit Agreement.

SECTION 5.04 *Resignation and Removal of the Depositary; Appointment of Successor Depositary.*

The Depositary may at any time resign as Depositary hereunder by notice of its election to do so delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided. Upon any such removal or appointment, the Company shall send notice thereof by first-class mail, postage prepaid, to the holders of Receipts.

In case at any time the Depositary acting hereunder shall resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor depositary, which shall be (i) a Person having its principal office in the United States of America and having a combined capital and surplus of at least \$50,000,000 and that is not an affiliate of the Company, or (ii) an affiliate of such a Person. If a successor depositary shall not have been appointed and have accepted appointment in 60 days, the resigning Depositary may petition a court of competent jurisdiction to appoint a successor depositary. Every successor depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all rights, title and interest in the deposited Convertible Preferred Stock and any moneys or property held hereunder to such successor and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor Depositary shall promptly mail notice of its appointment to the record holders of all outstanding Receipts.

Any corporation or other entity into or with which the Depositary may be merged, consolidated or converted, or any corporation or other entity to which all or a substantial part of the assets of the Depositary may be transferred, shall be the successor Depositary without the execution or filing of any document or any further act. Such successor Depositary may execute the Receipts either in the name of the predecessor Depositary or in the name of the successor Depositary.

The provisions of this Section 5.04 as they apply to the Depositary apply to the Registrar and the Transfer Agent, as if specifically enumerated herein.

SECTION 5.05 *Notices, Reports and Documents.*

The Company agrees that it will deliver to the Depositary, and the Depositary, if requested in writing by the Company and provided with all necessary information and

documents, agrees that it will, promptly after receipt of such notice, transmit to the record holders of Receipts, in each case at the address recorded in the books of the Depositary, the Transfer Agent or the Registrar, copies of all notices and reports generally made available by the Company to holders of the Convertible Preferred Stock and not otherwise made publicly available. Such transmission will be at the Company's expense and the Company will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request. In addition, the Depositary will transmit to the record holders of Receipts at the Company's expense such other documents as may be requested by the Company.

SECTION 5.06 *Indemnification by the Company.*

The Company shall indemnify the Depositary, any of the Depositary's Agents, the Transfer Agent and the Registrar against, and hold each of them harmless from, any loss, liability, damage, cost or expense (including the costs and expenses of defending itself) which may arise out of (i) acts performed, suffered or omitted to be taken in connection with this Deposit Agreement and the Receipts (a) by the Depositary, the Transfer Agent or the Registrar or any of their respective agents (including any of the Depositary's Agents), except for any liability arising out of bad faith, gross negligence or willful misconduct (which bad faith, gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) on the respective parts of any such Person or Persons, or (b) by the Company or any of its agents, or (ii) the offer, sale or registration of the Receipts or shares of Stock pursuant to the provisions hereof. The obligations of the Company set forth in this Section 5.06 shall survive the replacement, removal or resignation of any Depositary, Registrar, Transfer Agent or Agent of Depositary or termination of this Deposit Agreement. In no event shall the Depositary have any right of set off or counterclaim against the Depositary Shares or the Convertible Preferred Stock.

SECTION 5.07 *Fees, Charges and Expenses.*

No charges and expenses of the Depositary or any of the Depositary's Agents hereunder shall be payable by any Person, except as provided in this Section 5.07. The Company shall pay all transfer and other taxes and charges arising solely from the existence of this Deposit Agreement. The Company shall also pay all fees and expenses of the Depositary in connection with the initial deposit of the Convertible Preferred Stock and the initial issuance of the Depositary Shares evidenced by the Receipts and all withdrawals of the Convertible Preferred Stock by holders of Receipts. All other fees and expenses of the Depositary and any of the Depositary's Agents hereunder and of the Registrar or the Transfer Agent (including, in each case, fees and expenses of counsel) incurred in the preparation, negotiation, delivery, amendment, administration, modification, waiver, performance, enforcement and execution of this Deposit Agreement and incident to the performance of their respective obligations hereunder will be paid by the Company as previously agreed between the Depositary and the Company. The Depositary (and if applicable, the Transfer Agent and the Registrar) shall present its statement for fees and expenses to the Company once every three months or at such other intervals as the Company and the Depositary may agree.

ARTICLE 6
AMENDMENT AND TERMINATION

SECTION 6.01 *Amendment.*

The form of the Receipts and any provision of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary without the consent of holders of Receipts in any respect that the Company and the Depositary may deem necessary or desirable; provided, however, that no such amendment (other than any change in the fees of the Depositary, the Registrar or the Transfer Agent that are payable by the Company) which (i) shall materially and adversely alter the rights of the holders of Receipts or (ii) would be materially and adversely inconsistent with the rights granted to the holders of the Convertible Preferred Stock pursuant to the Certificate of Incorporation shall be effective unless such amendment shall have been approved by the holders of Receipts evidencing at least 66 2/3% in voting power of the Depositary Shares then outstanding. In no event shall any amendment impair the right, subject to the provisions of Section 2.06 and Section 2.07 and Article III, of any holder of any Receipts evidencing such Depositary Shares to surrender any Receipt with instructions to the Depositary to deliver to the holder the deposited Convertible Preferred Stock and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by this Deposit Agreement as amended thereby.

SECTION 6.02 *Termination.*

This Deposit Agreement may be terminated by the Company upon not less than 30 days' prior written notice to the Depositary if the holders of Receipts evidencing a majority of the Depositary Shares then outstanding consent to such termination, whereupon the Depositary shall deliver or make available to each holder of a Receipt, upon surrender of the Receipt held by such holder, such number of whole or fractional shares of deposited Convertible Preferred Stock as are represented by the Depositary Shares evidenced by such Receipt, together with any other property held by the Depositary in respect of such Receipt. This Deposit Agreement will automatically terminate if (i) all outstanding Depositary Shares shall have been converted in accordance with the provisions hereof (including the distribution pursuant to Section 4.01 or Section 4.02 of all Common Stock, Exchange Property or cash received by the Depositary in respect of the related conversion of Convertible Preferred Stock to which the holders of Receipts are entitled) or (ii) there shall have been made a final distribution in respect of the deposited Convertible Preferred Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the holders of Receipts entitled thereto.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any of the Depositary's Agents, the Transfer Agent or the Registrar under Section 5.06 and Section 5.07.

ARTICLE 7
MISCELLANEOUS

SECTION 7.01 *Counterparts.*

This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Deposit Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Deposit Agreement.

SECTION 7.02 *Exclusive Benefits of Parties.*

This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other Person whatsoever.

SECTION 7.03 *Invalidity of Provisions.*

In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby; provided, however, that if such provision affects the rights, duties, liabilities or obligations of the Depositary, the Transfer Agent or the Registrar, such Person shall be entitled to resign immediately.

SECTION 7.04 *Notices.*

Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by facsimile transmission confirmed by letter, addressed to the Company at:

Apache Corporation
2000 Post Oak Blvd., Suite 100
Houston, TX 77056
Attention: Matthew W. Dundrea
Facsimile: 713-296-6458
email: matt.dundrea@apachecorp.com

with a copy to :

Bracewell & Giuliani LLP
711 Louisiana Street, Suite 2300
Houston, TX 77002
Attention: John R. Brantley
Facsimile: 713-221-2112
email: john.brantley@bgllp.com

or at any other address of which the Company shall have notified the Depositary in writing.

Any notices to be given to the Depositary, Transfer Agent or Registrar hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or telecopier confirmed by letter, addressed to the Depositary:

Wells Fargo Bank, N.A.
161 North Concord Exchange
South St. Paul MN 55075
Facsimile: 651-450-4078
Attention: Apache Account Manager

Any notices given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if transmitted through the facilities of DTC in accordance with DTC's procedures or personally delivered or sent by mail, recognized next-day courier service or telecopier confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary provided that any record holder may direct the Depositary to deliver notices to such record holder at an alternate address or in a specific manner that is reasonably requested by such record holder in a written request timely filed with the Depositary and that is reasonably acceptable to the Depositary.

Delivery of a notice sent by mail shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a facsimile message) is deposited, postage prepaid, in a post office letter box, or in the case of a next-day courier service, when deposited with such courier, courier fees prepaid. The Depositary or the Company may, however, act upon any facsimile message received by it from the other or from any holder of a Receipt, notwithstanding that such facsimile message shall not subsequently be confirmed by letter as aforesaid.

SECTION 7.05 *Depositary's Agents.*

The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will notify the Company of any such action.

SECTION 7.06 *Holders of Receipts Are Parties.*

The holders of Receipts from time to time shall be deemed to be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof to the same extent as though such Person executed this Deposit Agreement.

SECTION 7.07 *Governing Law.*

This Deposit Agreement and the Receipts and all rights, claims, controversies and disputes arising under or relating to this Deposit Agreement or the Receipts shall be governed by, and construed in accordance with, the law of the State of New York applicable to agreements made and to be performed in said State, without regard to conflicts of laws principles thereof.

SECTION 7.08 *Inspection of Deposit Agreement and Certificate of Designations.*

Copies of this Deposit Agreement and the Certificate of Designations shall be filed with the Depositary and any of the Depositary's Agents and shall be open to inspection during business hours at the Depositary Office by any holder of any Receipt.

SECTION 7.09 *Headings.*

The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, Apache Corporation and Wells Fargo Bank, N.A. have duly executed this Deposit Agreement as of the day and year first above set forth and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

APACHE CORPORATION

By: /s/ Roger B. Plank
Name: Roger B. Plank
Title: President (Principal Financial Officer)

WELLS FARGO BANK, N.A.,
as Depositary, Registrar and Transfer Agent

By: /s/ Jennifer L. Leno
Authorized Signatory

[Signature Page to Deposit Agreement]

FORM OF FACE OF RECEIPT

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR SUCH LAWS.]

[*IF GLOBAL RECEIPT IS ISSUED:* UNLESS THIS RECEIPT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY RECEIPT ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL RECEIPT SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL RECEIPT SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATIONS REFERRED TO BELOW.]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH REGISTRAR AND TRANSFER AGENT MAY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.

Certificate Number_____

[Initial] Number of Depositary Shares_____

APACHE CORPORATION
RECEIPT FOR DEPOSITARY SHARES
Each Representing 1/20th of a Share of
6.00% Mandatory Convertible Preferred Stock, Series D
(with no par value)
(liquidation preference \$1,000 per share)

Wells Fargo Bank, N.A., as Depositary (the “Depositary”), hereby certifies that _____ is the registered owner of [_____] [the number shown on Schedule I hereto of] Depositary Shares (“Depositary Shares”), each Depositary Share representing 1/20th of one share of 6.00% Mandatory Convertible Preferred Stock, Series D, with no par value and liquidation preference of \$1,000 per share (the “Stock”), of Apache Corporation, a Delaware corporation (the “Company”), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated July 28, 2010 (the “Deposit Agreement”), among the Company, the Depositary and the holders from time to time of Receipts for Depositary Shares. By accepting this Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Receipt shall not be valid or obligatory for any purpose or entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized officer or, if a Registrar in respect of the Receipts (other than the Depositary) shall have been appointed, by the manual signature of a duly authorized officer of such Registrar.

Dated:

[Countersigned:

Wells Fargo Bank, N.A., as Depositary

By: _____]

By: _____
Authorized Signatory

[FORM OF REVERSE OF RECEIPT]

The following abbreviations when used in the instructions on the face of this receipt shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenant in common

UNIF GIFT MIN ACT — _____
Custodian _____
(Cust) (Minor)

TEN ENT - as tenants by the entireties

Under Uniform Gifts to Minors Act

JT TEN - as joint tenants with right of survivorship and not as tenants in common

(State)

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

For value received, _____ hereby sell(s), assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR
OTHER IDENTIFYING NUMBER OF ASSIGNEE, AS APPLICABLE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS
INCLUDING POSTAL ZIP CODE OF ASSIGNEE

_____ Depository Shares represented by the within Receipt, and do hereby irrevocably constitute and appoint

_____ Attorney to transfer the said Depository Shares on the books of the within named Depository with full power of substitution in the premises.

Dated _____

NOTICE: The signature to the assignment must correspond with the name as written upon the face of this Receipt in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED

NOTICE: The signature(s) must be guaranteed by a participant in a Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent.

Apache Corporation

Receipt for Depositary Shares,
Each Representing a 1/20th Interest in
6.00% Mandatory Convertible Preferred Stock, Series D

Certificate Number: []

The number of Depositary Shares initially represented by this Global Receipt shall be []. Thereafter the Transfer Agent and Registrar shall note changes in the number of Depositary Shares evidenced by this Global Receipt in the table set forth below:

Amount of Decrease in Number of Depositary Shares Evidenced by this Global Receipt	Amount of Increase in Number of Depositary Shares Evidenced by this Global Receipt	Number of Depositary Shares Represented by this Global Receipt following Decrease or Increase	Signature of Authorized Officer of Transfer Agent and Registrar

¹ Attach Schedule I only to Global Receipt.

Certificate of Designations
[ATTACHED]



Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
Kazakhstan
London

Bracewell & Giuliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas
77002-2770

713.223.2300 Office
713.221.1212 Fax

bglp.com

July 28, 2010

Apache Corporation
2000 Post Oak Boulevard
Suite 100
Houston, Texas 77056-4400

Ladies and Gentlemen:

We have acted as special counsel to Apache Corporation (the “Company”), a Delaware corporation, in connection with the Company’s offerings pursuant to an automatic registration statement on Form S-3 (No. 333-155884) (the “Registration Statement”) of:

(i) 26,450,000 shares (the “Shares”) of the Company’s common stock, par value \$0.625 per share (the “Common Stock”), pursuant to the common stock prospectus supplement dated July 23, 2010 (the “Common Stock Prospectus Supplement”) to the prospectus dated December 2, 2008 (together, the “Common Stock Prospectus”), and the common stock underwriting agreement dated July 22, 2010 between the Company and the underwriters named therein (the “Common Stock Underwriting Agreement”) and the two free writing prospectuses filed by the Company with the Securities and Exchange Commission (“Commission”) on July 23, 2010 pursuant to Rule 433 under the Securities Act of 1933, as amended (the “Pricing Term Sheets”); and

(ii) 25,300,000 of the Company’s depositary shares (the “Depository Shares”), each representing a 1/20th interest in a share of the Company’s 6.00% Mandatory Convertible Preferred Stock, Series D (the “Preferred Securities”), pursuant to the depositary shares prospectus supplement dated July 23, 2010 (the “Depository Shares Prospectus Supplement”) to the prospectus dated December 2, 2008 (together, the “Depository Shares Prospectus”), and the depositary shares underwriting agreement dated July 22, 2010 between the Company and the underwriters named therein (the “Depository Shares Underwriting Agreement”) and the Pricing Term Sheets.

We have examined originals or copies of (a) the Registration Statement and the documents incorporated by reference therein; (b) the Common Stock Prospectus and the Depositary Shares Prospectus and the documents incorporated by reference therein; (c) an executed copy of the Common Stock Underwriting Agreement and the Depositary Shares Underwriting Agreement; (d) the Pricing Term Sheets; (e) a specimen of the certificate representing the

Common Stock; (f) a copy of the certificate of designations establishing the Preferred Securities certified by the Secretary of State of the State of Delaware; (g) an executed copy of the deposit agreement dated July 28, 2010 between the Company and Wells Fargo Bank, N.A., as depositary (the "Depository"), on behalf of all holders from time to time of the depositary receipts (the "Deposit Agreement"); (h) the certificate evidencing the Preferred Securities as executed by the Company; (i) the global depositary receipt as executed by the Company and the Depository (the "Global Receipt"); (j) copies of the Company's restated certificate of incorporation and bylaws, each as amended to date, certified by the Secretary of State of the State of Delaware and by the corporate secretary of the Company, respectively; and (k) such other documents and records as we have deemed necessary and relevant for the purposes hereof. In addition, we have relied on certificates of officers of the Company and of public officials and others as to certain matters of fact relating to this opinion and have made such investigations of law as we have deemed necessary and relevant as a basis hereof. In the course of such examinations and investigations, we have assumed the genuineness of all signatures on, and the authenticity of, all documents and records submitted to us as originals, the conformity to original documents and records of all documents and records submitted to us as copies, and the truthfulness of all statements of fact contained therein.

Based on the foregoing and subject to the limitations, assumptions and qualifications set forth herein, and having due regard for such legal considerations as we deem relevant, we are of the opinion that:

1. The Shares have been validly issued by the Company and are fully paid and nonassessable;
2. The certificate representing the Preferred Securities has been duly delivered to the Depository and the Global Receipt evidencing the Depository Shares has been duly issued against deposit of the Preferred Securities in accordance with the Deposit Agreement, and the Global Receipt evidencing the Depository Shares has been validly issued and entitles the person in whose name the Global Receipt is registered to the rights specified therein and in the Deposit Agreement; and
3. The shares of Common Stock to be issued upon conversion of the Preferred Securities will be validly issued, fully paid and nonassessable.

Insofar as the foregoing opinion relates to the validity, binding effect or enforceability of the Deposit Agreement, (a) we have assumed that the Company and each other party to such agreement or obligation has satisfied those legal requirements that are applicable to it to the extent necessary to make such agreement or obligation enforceable against it in accordance with its terms, (b) such opinion is subject to applicable bankruptcy, insolvency and similar laws and decisions affecting creditors' rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law),

including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, and the possible unavailability of specific performance or injunctive relief, and (c) the enforceability of any exculpation, indemnification or contribution provisions contained in the Deposit Agreement may be limited by applicable law or public policy.

The foregoing opinion is based on and is limited to applicable New York law and the Delaware General Corporation Law, and we render no opinion with respect to the law of any other jurisdiction. The references to Delaware General Corporation Law in the preceding sentence include the referenced statutory provisions as well as all applicable provisions of the Delaware Constitution and the reported judicial cases interpreting those laws currently in effect. The foregoing opinion is as of the date hereof, and we expressly disclaim any responsibility to update such opinion after the date hereof.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement and to the references to our firm under the heading “Validity of the Securities” in each of the Common Stock Prospectus Supplement and the Depositary Shares Prospectus Supplement. By giving such consent, we do not admit that we are in the category of persons whose consent is required under the Securities Act of 1933, as amended, or the rules and regulations promulgated by the Commission thereunder.

Very truly yours,

/s/ Bracewell & Giuliani LLP

Bracewell & Giuliani LLP

CONTACTS:

(Media): **Bill Mintz** (713) 296-7276
 Bob Dye (713) 296-6662

(Investor): **Tom Chambers** (713) 296-6685
 Rob Rayphole (713) 296-6160

APACHE COMPLETES EQUITY OFFERINGS; NET PROCEEDS TOTAL \$3.48 BILLION

HOUSTON, July 28, 2010 — Apache Corporation (NYSE, Nasdaq: APA) today announced the completion of the previously announced sale of common stock and depositary shares with net proceeds from the offerings to the company totaling approximately \$3.48 billion after underwriting discounts and before expenses.

The option to purchase additional shares of common stock exercised by the underwriters increased the size of the common stock offering from 23 million shares to 26.45 million shares. The common stock offering was priced at \$88 per share. Net proceeds, before expenses, from the common stock offering were approximately \$2.26 billion.

The underwriters also exercised their option to purchase additional depositary shares that increased the size of the depositary share offering from 22 million shares to 25.3 million shares. Net proceeds, before expenses, from the depositary share offering were approximately \$1.23 billion. Each depositary share represents a 1/20th interest in a share of the company's 6.00% Mandatory Convertible Preferred Stock, Series D, with an initial liquidation preference of \$1,000 per share (equivalent to \$50 liquidation preference per depositary share).

Goldman, Sachs & Co., BofA Merrill Lynch, Citi and J.P. Morgan were joint book-running managers for the offerings.

Apache Corporation is an oil and gas exploration and production company with operations in the United States, Canada, Egypt, the United Kingdom North Sea, Australia and Argentina.

-end-

This news release shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

This news release contains certain “forward-looking statements” within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995 including, without limitation, expectations, beliefs, plans and objectives regarding production and exploration activities. Any matters that are not historical facts are forward-looking and, accordingly, involve estimates, assumptions, risks and uncertainties, including, without limitation, risks, uncertainties and other factors discussed in our most recently filed Annual Report on Form 10-K, on our website and in our other public filings and press releases. There is no assurance that Apache’s expectations will be realized, and actual results may differ materially from those expressed in the forward-looking statements. Other than as required by law, Apache assumes no duty to update these statements as of any future date.